

UNRAVELING THE CLOTH THAT BINDS LATINA GARMENT WORKERS IN TEXAS: A CRITICAL ANALYSIS OF THE TEXAS PAY DAY ACT

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I. Introduction.....	208
II. Garment Industry Plant Closings in Texas.....	210
III. Latina Grass-Roots Labor Organizations.....	216
IV. Texas-Based Latina Labor Organizations.....	218
A. Fuerza Unida.....	218
B. La Mujer Obrera.....	221
V. Seeking Legal Recourse.....	227
VI. Back Wages.....	230
VII. Texas Pay Day Act.....	236
VIII. Texas Pay Day Act Wage Claims.....	237
IX. Ineffective Legislation: The Texas Pay Day Act.....	241
A. No Private Right of Action.....	241
B. Lengthy Wage Claim Process.....	245
C. Judgment Proof Employers.....	245
D. Ambiguous Role of the Texas Attorney General.....	246
X. Proposal.....	247
A. Adjudicating Judgment Proof Employers.....	247
B. Attorney General Action.....	248
XI. Conclusion.....	251

* I dedicate this Comment to the founders and members of both *La Fuerza Unida* and *La Mujer Obrera*. I would like to thank *The Scholar* Board for their constant support, my editor Denise Mejía for her patience, constructive criticism, helpful suggestions; my mentor and dear friend, Professor Reynaldo Valencia for his guidance; my parents Carlos and Rosa Minjarez, for their love and encouragement; and finally, I thank the Lord, whose presence is always with me.

"I don't know the law. I don't know anything. I just know he owes me and I just know that I did work and sew with my own hands."

Felipa Perez, garment worker¹

"This company has a right to do this, they have a right to leave. . . . But we have a right to fight, because we're human beings; we're women and we can do it."

Petra Mata, founder of Fuerza Unida²

I. INTRODUCTION

Plant closings without prior notification are the most traumatic moments in a garment worker's life.³ Facing the reality of an uncertain future, hastily fired garment workers in Texas have little legal recourse. Imagine the following scenarios: In San Antonio, Texas, a group of Latina seamstresses travel to their daily job at the Levi Strauss & Co. plant on South Zarzamora Street. Instead of beginning an ordinary day of work, they are greeted with a sign stating the company plans to close the plant and move operations to Costa Rica. Within seconds, a total of 1,150 employees — mostly women — lose their jobs.⁴ According to Petra Mata, a former Levi's seamstress and present Fuerza Unida Co-Coordinator:

People screamed, cried, fainted. When you lose your job you feel like nothing but trash, a remnant, a machine to be thrown out. They take away your dignity. You get scared. How are you going to pay for the

1. Suzanne Gamboa, *No Trial for 6 Garment Workers Protested in Chains for Wages Owed*, S.F. EXAMINER, Jan. 29, 1991, at A14 [hereinafter Gamboa, *No Trial for 6 Garment Workers*] (quoting La Mujer Obrera member, Felipa Perez, after she lost her job without receiving her wages).

2. Suzanne Hoholik, *Former Levi Workers Recall San Antonio Plant's Closing*, KNIGHT-RIDDER TRIB. BUS. NEWS, Mar. 4, 1999, available in 1999 WL 13723046 [hereinafter Hoholik, *Former Levi Workers*] (portraying Petra Mata's sentiments toward the Levi's San Antonio plant closing). Fuerza Unida was formed from a collective group of Latina garment workers who were laid-off by Levi Strauss & Co. The group consistently attempts to hold the company responsible for its drastic plant closing which left hundreds of women unemployed. Fuerza Unida's mission is to create a unified voice for these hard working Latina seamstresses who were dismissed by one of the largest companies in this country, Levi's.

3. See Sherri Chunn, *El Paso's Maquila Migration*, ALBUQUERQUE J., Sept. 28, 1997, available in 1997 WL 18399353 (depicting Gricelda Rodriguez, a widowed mother of three, who after losing her job, became very depressed).

4. See Hoholik, *Former Levi Workers*, *supra* note 2 (citing that 1,150 garment workers lost their jobs when Levi Strauss closed its South Zarzamora plant, and moved its operations to Costa Rica).

*car, the house, the kids to eat and go to school? Hijole! After so many years of working for Levi's overnight we had nothing.*⁵

In El Paso, Texas, seamstresses employed by Sun Apparel, Inc. earned little more than the \$4.75 minimum wage stitching Polo jeans.⁶ Although employed by the company for over twenty years, hundreds of these workers lost their jobs when Sun Apparel, Inc. began production in Mexico where they pay local garment workers less than \$1.00 an hour.⁷ Eustolia Olivas, an El Paso seamstress, chained herself to her sewing machine in protest when her employer refused to pay her for five weeks of work.⁸ As a result, police arrested her and she spent three days in jail.⁹

This Comment will address the Texas Latina garment worker and her role in Texas-based Latina labor organizations. The Texas Pay Day Act¹⁰ will be scrutinized, as well as its inability to assist Latina garment workers. Part II provides a brief account of garment industry plant closings in Texas. Parts III and IV address the development of Latina grass-root labor organizations, focusing specifically on Texas-based organizations, Fuerza Unida, of San Antonio and La Mujer Obrera, of El Paso. Part V probes the legal recourse Fuerza Unida and La Mujer Obrera have sought in response to labor disputes. Part VI analyzes the problem of employers refusing to pay back wages to Latina garment employees. Part VII discusses the Texas Pay Day Act, while Part VIII examines its pur-

5. *Hilo De La Justicia/Thread of Justice: Campaign Bulletin of Fuerza Unida* (Fuerza Unida, San Antonio, Tex.), Spring 1998, Vol.1, No.1, at 3 [hereinafter *Fuerza Unida Campaign Bulletin*] (quoting Petra Mata's response to the Levi's Zarzamora plant closing).

6. See Allen R. Myerson, *El Paso Workers Feel NAFTA Hitting Home/Job Trends Suggest NAFTA Costs Texas*, AUSTIN AM.-STATESMAN, May 18, 1997, at K1 (commenting that "[e]ven after 15 years of work, Maria Consuelo Garcia made only slightly more than the \$4.75 minimum wage stitching together Polo, Fila and Sassoon jeans in the Sun Apparel Inc. factory in El Paso.").

7. See *id.* (stating, "Though Sun Apparel had no comment, the Labor Department said that these workers, and 320 others last year, lost their jobs because the company is bringing in more goods from Mexico, where garment workers usually are paid less than \$1 an hour."); see also Daphne Eviatar, *Free Trade with Mexico Will Escalate Crusades for Safe Garment-Industry Jobs Unions: Latina Workers Fight for Their Pay Under Conditions That Organizers Fear Will Only Be Exacerbated As Industry Moves South of the Border*, L.A. TIMES, Sept. 1, 1991, at 2 (arguing that the NAFTA agreement encourages U.S. garment employers to move their production lines to Mexico, thereby increasing the number of displaced American garment employees).

8. See Eviatar, *supra* note 7 (depicting an El Paso Latina garment worker owed back wages).

9. See *id.*

10. See TEX. LAB. CODE ANN. art. 61 (Vernon 1996). The current provisions of the Texas Pay Day Act are found in Chapter 61 of the Texas Labor Code. Chapter 61 is referred to as "Payment of Wages." See *id.*

pose and ineffectiveness. Finally, Part IX sets forth a proposal for amending the Texas Pay Day Act to cure its deficiencies.

II. GARMENT INDUSTRY PLANT CLOSINGS IN TEXAS

On February 22, 1999, Levi Strauss,¹¹ the largest U.S. clothing manufacturer, publicly announced its plans to close twenty-two plants throughout the nation, and fire 5,900 employees.¹² In Texas alone, Levi's will close four plants located in Harlingen, McAllen, El Paso and Wichita Falls.¹³ According to Levi's, its sales in 1998 declined 13%, from \$6.9 billion to \$6 billion.¹⁴ Finding itself at the losing end of a competitive apparel market, Levi's strategically planned its plant closures to improve its product development and marketing.¹⁵ Levi's claims it can only be-

11. See Bettijane Levine, *Levi Strauss Adjusting the Fit of Its Jeans*, HOUS. CHRON., Mar. 2, 1999, at 1 (reporting Levi's invented blue jeans during the 1850's). Levine states Bavarian immigrant, Levi Strauss, made work pants for gold miners out of cloth from ships' sails. See *id.*

12. See *Levi to Shut Plants, Cut Workers*, J. REC., Feb. 23, 1999, available in 1999 WL 9843414 (indicating Levi's intention to close plants throughout the United States).

13. See *id.*; see also Marie Coco, *Levi Strauss Doing the Right Thing Doesn't Ensure Corporate Survival*, DALLAS MORNING NEWS, Mar. 2, 1999, at 10A (reporting Levi's will lay off a projected 2,165 employees in Texas); Maria Halkias, *Levi Strauss Falling Victim to Fashion Faded Sales Force Plant Closings, Cut 5,900 Jobs*, DALLAS MORNING NEWS, Feb. 23, 1999, at 1A (stating Levi employees in Texas are amongst the hardest hit by the plant closings). According to Halkias, Levi's has historically had its biggest concentration of manufacturing in Texas. See *id.* In 1997 and 1998, Levi's already closed plants in Amarillo, El Paso, and San Angelo. See *id.*; Jim Pinkerton, *Levi's Blues: Firm Shuts 11 Factories*, HOUS. CHRON., Feb. 23, 1999, at 1 (detailing the Levi's plant closures in Texas will displace approximately 2,200 employees).

14. See Rachel Beck, *Levi Strauss to Close Four Plants in Texas Among 11 in North America*, ASSOCIATED PRESS, Feb. 22, 1999, available in WESTLAW, TXNEWS Database (stating Levi's contention that its sales declined 13%; however, Levi's does not publicly release earnings reports or any competitive data); see also Erica Garcia, *Levi Strauss Tightening Its Belt Jeans Maker to Ax 5,900, Close Plants*, N.Y. DAILY NEWS, Feb. 23, 1999 [hereinafter Garcia, *Tightening Its Belt*], at 39; Leslie Kaufman, *Levi Strauss Pays Price for Allowing Jeans to Lose Cool*, PATRIOT LEDGER, Feb. 23, 1999, at 11; *Levi Strauss Reports 13% Sales Drop for '98 on Weakness in Jeans*, WALL ST. J., Feb. 17, 1999, at A6; *Levi Strauss to Close 11 Plants in North America*, CHARLESTON DAILY MAIL, Feb. 22, 1999, at 5D.

15. See Beck, *supra* note 14 (noting Levi's inability to compete with popular clothing designers such as The Gap and Tommy Hilfiger); Garcia, *Tightening Its Belt*, *supra* note 14 (indicating Levi's could not compete with designer labels because of its failure to keep up with fashion trends); Kaufman, *supra* note 14 (stating that unlike Levi's, designers like Ralph Lauren and Tommy Hilfiger dominate the apparel market with fashionable pants); Pinkerton, *supra* note 13 ("Levi's has been especially slow at spotting current fashions and producing products quickly."); Marc Selinger, *Virginia Town Sees 300 Levi Jobs Lost*, WASH. TIMES, Feb. 23, 1999, at B7 (quoting John Ermatinger, president of Levi Strauss' Americas division, "[t]hese steps are crucial if we are to remain competitive."); *They Need*

come competitive again by relocating its manufacturing operations overseas, where it can benefit from lower labor costs.¹⁶ Employees in the Harlingen and Wichita Falls plants received notification of the plant closings on the same day as the press.¹⁷ Levi's is expected to notify employees in both McAllen and El Paso when the plants will close in June or July.¹⁸ In 1990, Levi Strauss closed its first Texas production plant located in San Antonio.¹⁹ Levi's attributed this closing to a lack of profits and the plant's inability to compete in the manufacturing industry.²⁰

Plant closings without sufficient prior notice have a severe emotional, physical, and financial impact on employees.²¹ The number of recent

A Face' Fashion Marketing Experts Take A Look At Levi Strauss and its Struggles, DALLAS MORNING NEWS, Mar. 1, 1999, at 3D (quoting Russell Simmons, hip-hop impresario and chairman of Phat Fashions Inc., "Levi's ain't fly").

16. See Garcia, *Tightening Its Belt*, *supra* note 14 (quoting John Ermatinger, president of Levi's Americas division, "Shifting a significant portion of our manufacturing for the U.S. and Canadian markets to contractors throughout the world will give the company greater flexibility to allocate resources and capital to its brands."); *Levi Strauss to Halve North American Plants*, J. COM., Feb. 23, 1999, at 3A (claiming the plant closings are part of a series of steps by Levi's to improve its competitiveness by moving its manufacturing operations overseas, where labor costs are lower); see also Levine, *supra* note 11 (explaining major apparel competitors relocate their plants to countries where low wages and no benefits are the rule). According to Levine, a pair of Levi's women's jeans cost about \$40, compared to Old Navy's price of \$23. See *id.* Levine states, "[M]any of Levi's competitors can sell their jeans for less. . . Even if Levi's jeans were lower priced, retailers say, their styles are not current." *Id.*

17. See Pinkerton, *supra* note 13 (listing plant closing dates and locations); *Strauss to Shut Half its American Jeans Plants*, ASIAN WALL ST. J., Feb. 23, 1999, at 2 (reporting workers in Texas will receive formal notification of the closings in June or July).

18. See Pinkerton, *supra* note 13.

19. See Luz Guerra, *Las Nuevas Revolucionarias*, AFSC (Texas-Arkansas-Oklahoma News from the American Friends Service Committee), Oct. 1997, Vol. 10, No. 3, at 2 (reporting Levi's announced the closure of its Zarzamora plant on January, 17, 1990). Although the Levi's plant was producing approximately 16,000 pants and 500 jackets per day, Levi's did not render the production profitable enough. See *id.* In addition, the plant could not compete with manufacturing costs at a Tennessee plant, as well as with Third World contractors. See *id.*

20. See *id.* (describing the reasons for closing plants).

21. See Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty, And America's Eroding Industrial Base*, 81 GEO. L.J. 1757, 1804 (1993) (depicting an employee's personal account as she learned of the proposed plant closure).

As far as how I felt about it that day, and the days after, and weeks, really for a couple of months after that? It was just like getting kicked in the gut. That's what I told people then, and that's what it was like. It was just like getting kicked in the gut. Maybe you'll want to say in your paper it was like getting kicked in the stomach. Maybe you should put it like that. But that's what it was like.

Id.; see also Suzanne Espinosa Solis, *Rare Shadows on Company's Image/Ex-Workers Take on Levi Strauss*, S.F. CHRON., July 18, 1994, at A1 (portraying Virginia Castillo, former sewing machine operator for Levi's Zarzamora plant, as she describes how she has nerve

plant closings has increased,²² especially in Texas garment industries.²³ For instance, during the 1970's, the apparel industry in El Paso employed approximately 40,000 garment workers.²⁴ Since 1995, at least 32 apparel factories have down sized or closed down.²⁵ There are about 10,000 garment workers currently employed in El Paso's garment industry.²⁶ Although the apparel industry is still one of the leading markets in Texas, it does not guarantee wage and job stability.²⁷ During the 1980's, El Paso garment workers reported frequent violations of minimum wage and maximum hours laws, extreme working conditions, and abrupt plant clos-

damage to her back and wrists, and is still unemployed). Espinosa Solis describes how a former garment worker underwent three surgeries to relieve carpal tunnel syndrome and herniated disks resulting from work-related injuries. *See id.*

22. *See* Ansley, *supra* note 21, at 1763 (asserting "The number and size of closings, as well as their frequency have all increased rapidly.").

23. *See* Janę E. Larson, *Free Markets Deep in the Heart of Texas*, 84 GEO. L.J. 179, 216 (1995) (emphasizing that in El Paso, Texas, "wage and job certainty in the area's garment industry . . . sharply reduced in the last decade"); *see also* Bill Medaille & Andrew Wheat, *Faded Denim NAFTA Blues: El Paso Confronts Deindustrialization and Betrayed NAFTA Promises*, MULTINATIONAL MONITOR, Dec. 1, 1997, at 23 (quoting Kathleen Bombach, a director of El Paso Community College). Bombach estimates that 20,000 jobs are vulnerable to permanently leaving El Paso, Tex. over the next five years. *See id.*

24. *See* Jeff D. Opdyke & Patrick Barta, *As Ranks of Low-Skilled Workers Swell, El Paso Struggles for Answer*, WALL ST. J., Feb. 25, 1998, at T1 (reporting that El Paso once "employed an estimated 40,000 garment workers as recently as the 1970s, representing the largest private-sector work force in town."). "But since 1995 alone, at least 32 apparel firms have cut back or closed down, and estimates are that just 10,000 garment workers remain." *Id.*

25. *See id.*; 1998-99 *Occupational Outlook Handbook* (visited Jan. 14, 1999) <<http://www.stats.bls.gov/oco/ocos233.htm1>> [hereinafter *Occupational Outlook Handbook*] (stating that in 1996, there were 453,000 garment workers in the U.S. and predicts the employment of garment workers will decline in the year 2006).

26. *See* Opdyke & Barta, *supra* note 24 (quoting "Apparel jobs, once the backbone of El Paso's economy, have been in retreat for years, leaving as their detritus a growing mass of undertrained, older Hispanic workers uneasy with English and in many cases lacking even a grammar-school education.").

27. *See* *Sweatshops: America's Labor Struggle* (visited Jan. 27, 1999) <<http://www.msnbc.com/onair/nbc/dateline/shop.asp>> (detailing the apparel industry is an \$89 billion a year business).

From October 1995 to June 1996, the Wage and Hour Division of the Department of Labor has investigated 95 garment factories, finding more than half in violation. In the same period, labor officials have recovered more than \$2 million in back wages due to more than 600 garment workers. But there are less than 800 investigators to enforce the labor laws that protect the estimated 1 million garment industry workers, and the often concealed nature of the modern-day sweatshop presents a difficult challenge.

Id.

ings which left employees with weeks of unpaid wages.²⁸ Even though the garment industry does not guarantee wages and job stability, Latina garment workers continue to seek garment jobs because they cannot compete for employment that would require an academic education and effective communication skills.²⁹ Since the garment industry thrives on manual labor, garment workers have greater opportunities for employment in comparison to other areas of the job market.

Statistically, victims of plant closings throughout Texas tend to be Latina women, between the ages of 35 to 55, who have worked in the garment industry throughout their lives.³⁰ They speak little or no English, and are not academically prepared to compete in the job market.³¹ Some of the women, who illegally crossed the border to find work, are now legal residents of the United States.³² Although uneducated, they are talented experts in the garment industry.³³ Their hands sew with precision and diligence to meet mandatory daily production quotas.³⁴ Consuming

28. See Larson, *supra* note 23, at 216 (reporting El Paso garment workers' complaints against employers).

29. See Jasmina Wellinchoff, *Learning the Ropes—FEFA Course Helps Low-Income People Develop a Business*, SAN ANTONIO EXPRESS-NEWS, Nov. 27, 1994, available in 1994 WL 3544768 (explaining that many of the laid-off Levi Strauss seamstresses were Mexican immigrants who couldn't speak English and never attended United States schools). See generally 1997 *National Occupational Employment and Wage Estimates* (visited Jan. 14, 1999) <<http://stats.bls.gov/oesnl/oes92717.html>> (presenting employment distribution of sewing machine operators in the U.S. by wage range where 54% made an annual wage of \$11,960-\$17,659; 26% made under \$11,960; 13% made between \$17,660-\$20,779; and, 5% made between \$20,750-\$23,399).

30. See Opdyke & Barta, *supra* note 24 (claiming that displaced workers "tend to be Hispanic women, age 35 to 55, who speak little or no English and who possess no marketable skills."); Guerra, *supra* note 19 (stating that prior to losing their jobs, Fuerza Unida members "had no consciousness of being part of a larger community of workers, had no understanding of their place in the global marketplace, had no analysis or thoughts about their status as women in the workplace or at home.").

31. See Opdyke & Barta, *supra* note 24 (detailing that an overwhelming number of displaced garment workers do not possess marketable skills). "Where once they would have job-hopped to another garment shop, that rarely is an option today. They instead are left trying to muddle through interviews in English for jobs they are ill-equipped to do in industries they've never been exposed to." *Id.*

32. See Moises Sandoval, *NAFTA Changes Displace Women Workers*, NAT'L CATH. REP., Dec. 22, 1995, at 18 (explaining that many of the displaced El Paso seamstresses are legal residents of the United States).

33. See *Occupational Outlook Handbook*, *supra* note 25, at 4 (stating that "[i]n the apparel industry, for example, few employers require production workers to have a high school diploma or previous work experience."). "In general, apparel workers need good hand-eye coordination and the ability to perform repetitive tasks for long periods. Knowledge of fabrics and their characteristics is sometimes required." *Id.*

34. See Opdyke & Barta, *supra* note 24 (portraying Matilde Lopez, a seamstress employed for Sun Apparel, Inc. in El Paso, Texas, for twenty years before losing her job in

themselves with an overabundance of work to financially support their families, garment workers rarely contemplate the possibility of becoming unemployed.³⁵

Garment industry employers do not require their employees to speak English because communication skills are not necessary for this type of work.³⁶ Instead, garment employees continuously labor over factory-owned sewing machines.³⁷ The hope of advancing in the workplace or receiving promotions does not exist in the minds of these women.³⁸ They work arduously to survive and to provide for their families. Thus, they are content with jobs paying minimum wages, and refrain from complaining about their employers.³⁹

After losing their jobs, dislocated Latina seamstresses found themselves incapable of competing for jobs: "The older workers can't get back

April 1995). In response to the inability of displaced Latina garment workers to compete for employment, Bill Arballo, district manager for the nation's largest garment and textile workers union, has stated that "[the garment workers] are too young to retire, but too old to rehire. They're becoming statistics." *Id.*

35. See Marilyn Haddrill, *El Paso Workers Facing a Grim Holiday*, DALLAS MORNING NEWS, Dec. 21, 1997, at 47A (describing how a laid-off seamstress was extremely depressed because she did not know English, and was concerned about her future).

36. See Jim Carrier, *U.S. Made Goods Laced in Irony Borderline Sweatshops Redefining 'Proud' Label*, DENV. POST, Oct. 21, 1991, at 10A (portraying El Paso seamstress Veronica Orozco operating her sewing machine). "A Spanish-speaking U.S. citizen in a barrio factory, Orozco is pregnant with twins. She has no medical insurance and earns \$4.25 an hour making belt loops on Sunbelt fashion bibs." *Id.*

37. See *Occupational Outlook Handbook*, *supra* note 25, at 3 (contending that "[a]pparel production work can be physically demanding."). "Some workers sit for long periods, and others spend many hours on their feet, leaning over tables and operating machinery." *Id.*

38. See *id.* at 4 (stressing that as garment workers "gain experience, they are assigned more difficult operations."). "Further advancement is limited, however. Some production workers may become first-line supervisors, but the majority remain on the production line." *Id.*

39. See Jenalia Moreno, *El Paso's Torn Fabric/Border City Struggles to Mend Loss of Apparel Industry*, HOUS. CHRON., Dec. 14, 1997, at 1 (contending that "for people who have worked in the garment industry most of their lives, there was no real need to learn English or gain additional skills."). "They were content with jobs paying the minimum wage, or slightly more." *Id.*; see also Espinosa Solis, *supra* note 21 (emphasizing Fuerza Unida advisor, Ruben Solis' statement that "without having had a high school education, these jobs were one way they could still make salaries that were considered good."). "They could earn \$7, \$8, or \$9 an hour, but because they were paid on a piece rate, they had to work extremely fast and hard." *Id.*; see *Occupational Outlook Handbook*, *supra* note at 25, at 6 (claiming that in 1996, sewing machine operators in the U.S. had median weekly earnings of \$250.00).

into the economy—they aren't employable."⁴⁰ Their inability to speak proficient English and attain a high school diploma renders them unemployable.⁴¹ Gradually, these women have become statistics of an industry that puts profits ahead of its own employees. For instance, El Pasoan, Gricelda Rodriguez, worked in the garment industry for twenty-eight years without learning to speak English.⁴² Her employer paid her more than \$6.00 an hour with full benefits to sew garments.⁴³ Gricelda never learned to speak English, since learning English was not a job requisite for her position as a seamstress, leaving her with few options.⁴⁴ In February 1995, Rodriguez lost her job after her company moved its production line to Mexico.⁴⁵ She asked herself, "Without any money, what's going to happen to my children?"⁴⁶ Rodriguez is forty-five years old, a widow, and sole supporter of three sons.⁴⁷

Unemployment due to job flights⁴⁸ has forced garment workers to lose their homes, vehicles, and basic utility services: "We are just seen as low-

40. See Opdyke & Barta, *supra* note 24 (depicting La Mujer Obrera consultant, Guillermo Glenn, as he describes his personal views concerning displaced La Mujer Obrera members' attempts at seeking new employment).

41. See Leo Lam, Comment, *Designer Duty: Extending Liability to Manufacturers for Violations of Labor Standards in Garment Industry Sweatshops*, 141 U. PA. L. REV. 623, 639 (1992) (discussing "the primary factor confining garment workers to their occupations is the lack of English skills."). Lam states that "[m]any seamstresses . . . are untrained for any other type of work." *Id.*

42. See Steven H. Lee, *Fallout From NAFTA: Laid-off Workers Struggle with Retraining Efforts*, DALLAS MORNING NEWS, Nov. 27, 1996, at 1D (portraying a Latina garment employee who did not need to learn English for her job). After her employer moved the production line to Mexico, she found herself unemployable and incapable of obtaining another job. *See id.*

43. *See id.*

44. *See id.* Latina seamstress Maria Fernandez said "[t]here was a politician who came to us and said, 'It's your fault. Why didn't you learn English?'" *Id.* She further stated "we didn't learn English because we went to a factory. . . The less you talk, the better for them. Did you want us to speak English with the machines?" *Id.*

45. *See id.*

46. *See id.*

47. *See id.*

48. See FUERZA UNIDA, BOYCOTT LEVI'S (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (describing that "[i]n 1990, Levi's moved its Dockers pants production from San Antonio, Texas, to Costa Rica—1150 mostly Mexican American women were put out of work, devastating both families and the community."). "Job Flight" refers to those garment factories which close down in the United States to set up production across the border in Mexico to benefit from cheap labor and low cost production. *See* Carrier, *supra* note 36 (stating how cheaper labor in Mexico has caused thousands of low-paid women to lose their jobs); Chunn, *supra* note 3 (attributing unemployment and the increase of job loss to the relocation of American factories to foreign countries); Haddrill, *supra* note 35 (acknowledging that companies move their factories to Mexico in search of lower wages); Moreno, *supra* note 39 (describing the effects of NAFTA and the relocation

skilled Mexicans not deserving of a job. We have never depended on government aid, and we do not want to start now.”⁴⁹ Similar stories of other displaced women brought about the creation of grass-roots labor organizations to help former garment workers in the fight against their employers.

III. LATINA GRASS-ROOTS LABOR ORGANIZATIONS

Ten years ago, Latina seamstresses would never have challenged their employers.⁵⁰ Now, with the development of grass-roots organizations, they have learned to vocalize their concerns with confidence.⁵¹ This confidence is generated from the educational opportunities these organizations have provided their members, as well as the encouragement the members instill in one another to advocate for their rights publicly.

The garment industry has been a model of abusive employment practices for at least a century.⁵² Subcontractors, who have no control over business dealings, employ the majority of garment workers.⁵³ These subcontractors are “supervisors” who are totally dependent on the manufacturers. Early in this century, garment manufacturers “wiped their hands” of any liability by purposely contracting out employees through subcontractors.⁵⁴ This tactic prevented garment workers from unionizing, and

of companies to Mexico and Asia). See generally *Occupational Outlook Handbook*, *supra* note 25 (noting that NAFTA permits the import of garments produced in Mexico and Canada into the United States duty-free). “Some apparel companies are expected to move their production facilities to Mexico to reduce costs.” *Id.*

49. Jodi Bizar, *NAFTA Under Fire in El Paso Mayor Blames Agreement for Economic, Job Losses*, SAN ANTONIO EXPRESS-NEWS, Nov. 14, 1997, at 1E (quoting Maria Fernandez weeping as she described how she lost her job after twenty years of employment and how she is not qualified to find other work).

50. See Elizabeth Hudson, *Silencing Sewing Machines, La Mujer Obrera Strikes*, WASH. POST, May 30, 1991, at A3 (stating that “[t]en years ago, it might have been unthinkable for such workers, overwhelmingly Hispanic women who speak little or no English, to challenge factory bosses.”). The rise of La Mujer Obrera, Spanish for “The Working Woman,” is changing things in El Paso. See *id.*

51. See Peter Rachleff, *Peering into the Crystal Ball: The Future of the U.S. Labor Movement*, CANADIAN DIMENSION, Aug. 1, 1994, at 23 (discussing innovative organizing at the grass-roots level to be “linking workplaces and communities; revolving around worker centers, as activists in La Mujer Obrera and Fuerza Unida have called their community-based labor organizations in El Paso and San Antonio.”).

52. See Jennifer Middleton, *Contingent Workers in a Changing Economy: Endure, Adapt, or Organize?*, 22 N.Y.U. REV. L. & SOC. CHANGE 557, 590 (1996) (claiming the garment industry has been notorious for abusing its workforce).

53. See *id.* (explaining that subcontractors are middlemen who claim no responsibility toward the design, the selling, or the wages paid to garment workers).

54. See *id.* at 591 (explaining that manufacturers began contracting out employees early in this century to avoid any responsibility toward the factory garment workers).

enabled manufacturers to deny any responsibility to their garment employees.⁵⁵ Since manufacturers and subcontractors refuse to assume responsibility for labor abusive practices, garment workers were unable to seek assistance outside the workplace. After enduring long periods of labor injustices, such as lack of wages, low pay, and extensive work hours, garment workers began addressing their rights as employees.⁵⁶ Since outside assistance did not exist, they used each other and formed collective unions.⁵⁷ Such worker-led organizations enabled garment workers to confront their employers and achieve some effective results. For example, in 1910, the International Ladies' Garment Workers' Union (ILGWU) influenced manufacturers to offer standardized wages and decent working conditions.⁵⁸ Although grass-roots organizations have not triumphed against employers in every instance, they have managed to become a recognized entity in the garment industry. For instance, despite Fuerza Unida's public denouncement against Levi Strauss, Levi's has failed to negotiate a settlement.⁵⁹ However, rather than being discarded as mere "production lines," grass-roots organizations have given garment workers an identity. This identity comes in the form of a collective entity that has forced employers to acknowledge garment workers' roles in the industry. Instead of employers dealing directly with one employee, em-

55. *See id.*

56. *See id.* at 590-91 (stating that "[t]he great majority of garment workers in this country and around the world are employed by small subcontractors—who neither design, nor own, nor sell, nor in any way control the work they do or the price they are paid for it"). In order to avoid unionization, garment manufacturers began the practice of "contracting out," which in turn allowed them to deny any responsibility toward the people who produced their designs.

57. *See id.* at 589-91 (asserting that workers' advocates in the garment industry have a long history of addressing the abuses that modes of production can generate). Unions have been able "to deal with the growth of the contingent workforce, a workforce that is extremely resistant to organization due to its transient nature and workers' tenuous job status." *Id.*

58. *See* Middleton, *supra* note 52, at 591. Detailing how in 1910, the ILGWU negotiated a 'Protocol of Peace' with the coat and suit manufacturers' association in New York, under which manufacturers offered standardized wages and work conditions throughout contracting shops as long as the ILGWU successfully organized throughout the entire industry. The agreement broke down, however, as manufacturers found themselves facing competition from contractors outside the region.

Id.

59. *See* Gary MacEoin & Dorothy Vidulich, *Levi Garment Workers Wage Regional Protests*, NAT'L CATH. REP., Nov. 18, 1994, at 9 (discussing former workers continuous efforts to maintain pressure on Levi Strauss & Co.). The article discusses Fuerza Unida's attack against Levi's and the progress this San Antonio-based grassroots organization has been able to make. *See id.*

ployers are forced to reckon with a worker-empowered organization comprising numerous garment employees.⁶⁰

Organizations like the ILGWU have crossed cultural lines, thereby influencing Latina garment workers to organize and advocate on their own behalf. Like the ILGWU and other organizations, Latina labor organizations in Texas have evolved throughout a tenuous history ranging from silent women to vocal advocates.

IV. TEXAS-BASED LATINA LABOR ORGANIZATIONS

Former Latina garment workers created Texas-based organizations for the protection and advancement of the Latina garment worker. Texas Latina garment labor organizations, "La Mujer Obrera" and "Fuerza Unida" located in El Paso and San Antonio respectively, are advocacy groups dedicated to educating displaced workers about their rights, as well as educating the public about the detrimental effects garment workers suffer after losing their jobs.⁶¹ Both organizations are worker-led centers created by displaced garment workers.

A. *Fuerza Unida*

Fuerza Unida, which means "United Force," evolved on February 12, 1990, in response to the Levi Strauss plant closing on South Zarzamora Street in San Antonio on January 17, 1990.⁶² Following the Levi plant closing, an estimated 92% of displaced workers were Latina.⁶³ The wo-

60. See Guerra, *supra* note 19 (depicting Fuerza Unida's boycott of Levi's products); Eviatar, *supra* note 7 (noting that "La Mujer Obrera is leading the struggle for industry reform in El Paso, focusing on the 15,000 Latinas who work in the city's garment factories.").

61. See Jennifer Gordon, Comment, *We Make the Road by Walking: Immigrant Workers, the Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.—C.L. L. REV. 407, 428 (1995) (defining "workers centers" as, "[c]ommunity-based membership organizations that organize workers to fight widespread labor exploitation.").

Workers centers organize at the grassroots level, across trades and industries, in communities of working-class people. In addition to confronting systematic exploitation in the workplace, the centers also focus their attention on the economic, social, and political concerns of their members. These centers are part of an effort to build a new labor movement, to lead the fight against exploitation of immigrants and other working class people.

Id.

62. See *The Birth of Fuerza Unida*, AFSC (Texas-Arkansas-Oklahoma News from the American Friends Service Committee), Oct. 1997, Vol. 10, No.3, at 2 (discussing the way laid-off workers organized a meeting to address concerns and grievances and formed Fuerza Unida on February 12, 1990).

63. See *id.* (emphasizing that out of the 1,115 workers of the Levi South Zarzamora plant, 92% were Latina, 86% were women). "Some had been at the same job for 30 or 40

men who now comprise Fuerza Unida never considered the possibility of being left without employment. They labored over their sewing machines daily and never questioned their positions in the workplace. These women expected job security for several years,⁶⁴ and refused unionizing with the Amalgamated Clothing and Textile Workers' Union (ACTWU) because of their loyalty and trust in Levi's.⁶⁵ Immediately following the Zarzamora plant layoffs, garment workers organized to fight Levi's using a national campaign to boycott Levi's products,⁶⁶ bringing two court cases against Levi's,⁶⁷ and conducting numerous public protests against the corporation.⁶⁸

The mission of Fuerza Unida is to continue struggling for gender equality and the empowerment of women in the marketplace.⁶⁹ Levi's contended the plant closing was mandatory because the production was not

years; overnight they lost their job, their salary and benefits, their plans for the future, their extended family." *Id.*; see also Middleton, *supra* note 52, at 606 (providing that Levi's relocation to Costa Rica displaced more than 1,100 employees, and caused severe dislocation in the local economy).

64. See Espinosa Solis, *supra* note 21 (quoting Fuerza Unida advisor, Ruben Solis, stating, "[T]hese are people who believed what they had been told, that they were part of the Levi family.").

65. See Middleton, *supra* note 52, at 606 (recounting that before Levi's announced its plans to close down the South Zarzamora plant, "[t]he seamstresses were expecting relatively secure employment for years to come—they had just rebuffed an organizing effort by the Amalgamated Clothing & Textile Workers' Union (ACTWU) in a demonstration of trust and loyalty for the company.").

66. See *id.* (stating that immediately following the Zarzamora plant closing, the displaced employees decided to fight the closure through rallies and demonstrations to push the state to pay for both job retraining and education).

67. See [Fuerza] Unida v. Levi Strauss & Co., 986 F.2d 970 (5th Cir. 1993) (affirming the District Court's granting of Levi's request for summary judgment); [Fuerza] Unida v. Levi Strauss & Co., No. CIV. SA-90-CA-480, 1992 WL 467488, at *1 (W.D. Tex. Mar. 6, 1992) (describing displaced employees bringing suit against Levi's alleging discrimination under ERISA Section 510, which prohibits companies from discriminating against workers in the exercise of their rights to pension and health benefits, and invoking the Texas workers compensation prohibition against discrimination for filing of workers' compensation claims). Defendant Levi's moved for summary judgment, which Judge H.F. Garcia granted. See *id.*; see also Middleton, *supra* note 52, at 606 (detailing that, "[w]hen local activism failed to prompt a reconsideration on the part of Levi's officials, the workers turned to the courts").

68. See Middleton, *supra* note 52, at 606 (explaining that displaced workers decided to fight the Levi's plant closure with rallies and demonstrations).

69. See Petra Mata, *A Spiritual Place*, AFSC (Texas-Arkansas-Oklahoma News from the American Friends Service Committee), Oct. 1997, Vol. 10, No.3, at 3 (quoting Fuerza Unida's mission, "[O]ur goal is to empower our people, to help them develop strategies, to enable them to talk clearly and honestly with any other person."). "We want to help people learn not to be afraid, because they can do it. We can all do it, with a will and sacrifice—of course, because life itself is about struggle and sacrifice." *Id.*

profitable enough: "We can't make shirts in the U.S. because all our competitors have gone offshore."⁷⁰ Currently, Fuerza Unida still maintains its one-on-one fight against the company: "We feel the way Levi's closed down was a betrayal on their part."⁷¹ Members of Fuerza Unida continue to demand that Levi's provide employees with an estimated \$3.5 million dollars in back pay and additional benefit claims.⁷² Fuerza Unida vows to continue its relentless pursuit of a settlement agreement with Levi's. Levi's has publicly stated that it has made offers to meet with Fuerza Unida, but that Fuerza Unida has refused to respond.⁷³ Levi's alleges it gave the workers ninety days notice, extended medical benefits for three months, and provided job training.⁷⁴ As Fuerza Unida continues its dispute against Levi's, members sew bed comforters and pillows for profit to provide food and other necessities for needy members.⁷⁵ In

70. Reese Erlich, *Former Levi Strauss Workers Protest Texas Plant Closing*, CHRISTIAN SCI. MONITOR, Nov. 9, 1992, at 7 (quoting David Samson, spokesman for Levi's, that Levi's gave displaced workers of the Zarzamora plant wages and benefits well beyond what was legally required, and that Levi's continues to employ 23,000 workers in the United States while other garment manufacturers moved their production lines overseas). "The record herein reflects that defendant was motivated by economic considerations to close the plant." *Id.* However, displaced workers contend Levi's profits reached \$357 million in 1991 on nearly \$5 billion in sales, "Closing their plant, they say, was not an economic necessity." *Id.*

71. Mata, *supra* note 69, at 3 (portraying former Levi's employee Petra Mata sentiments concerning the plant closing). "I was there for 14 years, but there were people who worked for that plant for 20, 25 years- their whole lives! We feel the way Levi's closed down was a betrayal on their part." *Id.*

72. See Tom Bower, *Former Levi's Employees Fight to Regain Benefits*, SAN ANTONIO EXPRESS-NEWS, Jan. 18, 1996, available in 1996 WL 2817736 (citing La Fuerza Unida's efforts to regain an estimated \$3.5 million in back pay and benefit claims).

73. See Philip Bookman, *Strife Battles Levi's*, IND. J., Mar. 9, 1995, at 1 (quoting company spokesman, Sean Fitzgerald). A spokesman for Levi's stated that they "don't know who the people are who are protesting. We have offered to meet with them, but they don't respond. We have always wanted to do the right thing. Now, we still want to make it right." *Id.*

74. See Erlich, *supra* note 70, at 2 (emphasizing company spokesman, David Samson's claim that Levi's went well beyond the legal requirements to help its workers); see also Espinosa Solis, *supra* note 21 (quoting company spokesman, Davis Samson). "This is certainly an unusual circumstance, and we certainly understand the hardship the closing of a factory poses on anybody. . . . But being a responsible company and a good company doesn't mean you don't have to make difficult decisions." *Id.*; see also Jeannie Kever & Michael Paulson, *Employee Suit Against Levi Strauss Thrown Out*, S.F. EXAMINER, Mar. 13, 1992, at B1 (quoting company spokesman, Armando Ojeda). "We believe all along that we treated our employees in a fair and responsible way. . . . The judgment validates that, although it doesn't diminish our concern for the well being of our employees in San Antonio." *Id.*

75. See Hoholik, *Former Levi's Workers*, *supra* note 2 (describing the money Fuerza Unida makes from selling bedding is used to buy food from the San Antonio Food Bank which is passed out once a month to approximately seventy families in the community).

addition to fighting for their rights, the organization provides moral and spiritual support to its members.

Fuerza Unida perceives the Levi's Zarzamora plant closing to be a "blessing in disguise."⁷⁶ Fuerza Unida members feel it allowed them the opportunity to organize into a team unit dedicated to encouraging Latina seamstresses to vocally advocate their employment concerns rather than remaining silent.⁷⁷ Presently, Levi's publicly announced plans to downsize by laying-off 991 workers at two Texas plants in El Paso and Amarillo by the end of this year.⁷⁸ According to Levi's, this move will enable the company to save \$200 million annually by the end of 1999.⁷⁹ Partly due to Fuerza Unida's impact, Levi's has announced that it will continue to pay employees in both the El Paso and the Amarillo plants for the next eight months,⁸⁰ extending the pay six months more than required by law.⁸¹

B. *La Mujer Obrera*

El Paso-based "La Mujer Obrera" was founded in 1981 by various Latinas who lost their jobs due to plant closings.⁸² La Mujer Obrera stands for "The Working Woman" and like its San Antonio counter-part, Fuerza Unida, it is composed primarily of Latina garment workers.⁸³ Unlike Fu-

"After the closing, we began to care about human rights—the people. We see what people go through, their need for food and we help." *Id.*

76. *See id.* (depicting former Levi employee, Irene Reyna, as she considers the plant closing a "blessing in disguise").

77. *See id.* (quoting Fuerza Unida member, "[W]hat we have done is, Levi's sort of handed us lemons and we made lemonade.").

78. *See Levi's Plans to Close 2 Texas Plants*, S.F. CHRON., Sept. 29, 1998, at D1 (declaring that Levi's plans to dismiss 991 workers at plants in El Paso and Amarillo, Texas, by year's end).

79. *See id.* (explaining the downsizing plan will reduce operating costs so that Levi's can save up to \$200 million).

80. *See id.* (emphasizing Levi's claim to pay 382 employees in the El Paso plant and 609 employees in the Amarillo plant for the next eight months, six more months than required by law).

81. *See id.*

82. *See* Guadalupe T. Luna, *On Holding the Line and Retrogressive Zeitgeist: A Tribute to Judge Theodore McMillian*, 52 WASH. U.J. URB. & CONTEMP. L. 59, 76 (1997) (presenting La Mujer Obrera as an organization composed of El Paso garment workers); *see also* LA MUJER OBRERA, WOMEN WORKING TOGETHER (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) [hereinafter WOMEN WORKING TOGETHER] (stating that La Mujer Obrera formed in 1981); Diana Solis, *Trade Pact Puts Mexican-Americans in a Dilemma over Jobs in Border Areas*, WALL ST. J., Aug. 7, 1992, at 6 (describing La Mujer Obrera, or Working Woman, as a group fighting the flight of Texas garment factories to Mexico).

83. *See* Luna, *supra* note 82, at 76 (indicating members of La Mujer Obrera are Latina garment workers).

erza Unida, however, La Mujer Obrera does not devote itself towards advocating against a sole corporation.⁸⁴ La Mujer Obrera's membership comprises seamstresses who have lost their jobs from various employers throughout the El Paso area.⁸⁵ Membership includes about 900 garment workers, the majority of which are legal permanent residents or illegal immigrants.⁸⁶

La Mujer Obrera's primary mission⁸⁷ is to exercise employee rights to recover back pay, workers' compensation claims, minimum wages, and safety standards for its members.⁸⁸ La Mujer Obrera's primary objectives include educating workers to exercise their employee rights, and encouraging them to assume leadership roles within their communities.⁸⁹ According to La Mujer Obrera representatives, "[e]ducational programs form the basis for our organizing work and raise workers' awareness of their role as women and as economic producers."⁹⁰ La Mujer Obrera teaches its members that they are entitled to stable jobs, education, housing, medical care, and political rights.⁹¹ La Mujer Obrera maintains that employee unionization is an effective solution to advocating against former employers.⁹²

These Latina labor organizations evolved into respected advocacy groups as a result of their dedication and relentless pursuit of workers' rights. In fact, these grass-roots organizations that formed in response to

84. *See id.* ("[I]n attempting to recover lost wages by unscrupulous employers who failed to compensate garment workers for hours worked, La Mujer Obrera also seeks to improve the deplorable working conditions which characterize the garment sweatshops.").

85. *See* Medaille & Wheat, *supra* note 23, at 6 (listing El Paso factories that have laid-off employees after NAFTA was implemented including Levi's, Sun Apparel, and East West Apparel); *see also* WOMEN WORKING TOGETHER, *supra* note 82 (presenting list of factories closed throughout El Paso such as Sun Apparel, Farah Manufacturing and Levi Strauss).

86. *See* WOMEN WORKING TOGETHER, *supra* note 82 (explaining that most members of La Mujer Obrera are either legal permanent residents or illegal immigrants); Sandoval, *supra* note 32 (stating most Latina seamstresses are either legal permanent residents or illegal immigrants).

87. *See* WOMEN WORKING TOGETHER, *supra* note 82 ("Our goal is to help workers obtain the economic, political and social power necessary to ensure a life with dignity and justice in which our basic needs are met.").

88. *See id.* (emphasizing La Mujer Obrera's belief that all workers are entitled to decent stable jobs, education, housing, health, nutrition, political liberty, and peace).

89. *See id.*

90. *Id.*

91. *See id.* (stating that "one of our principal objectives are to educate workers so that they are able to defend their rights, and to take leadership positions in their communities"). According to La Mujer Obrera, "educational programs form the basis for our organizing work and raise workers' awareness of their role as women and as economic producers." *Id.*

92. *See id.*

local plant closings now embrace many people and issues.⁹³ They have served as voices on behalf of workers who cannot speak English or who are incapable of defending themselves against corporate employers. In addition, members of these organizations have learned to care for each other as a community by forming food banks and establishing child care programs.⁹⁴ Before Latina seamstresses organized, they had no sense of identity.⁹⁵ They did not comprehend their roles in the garment industry. In fact, they did not understand the garment industry as a whole. They felt fortunate to have jobs and never confronted their employers about their employment.⁹⁶ Members of Fuerza Unida and La Mujer Obrera now comprise an identity of a united work force with a strong and demanding voice. They are no longer constricted to the images of meek and passive Latina women hovering over sewing machines. They now have strength. They now have a voice.

After educating themselves about the garment industry and its impact on their communities, Latina seamstresses learned not to hide silently behind their sewing machines. Organizations like Fuerza Unida and La Mujer Obrera provided their members with the "backbone" necessary to

93. See Mata, *supra* note 69, at 3 (paraphrasing Fuerza Unida member Petra Mata).

Many women come to Fuerza Unida who have never known that they have a vote, that they can raise their voices to say this is what I want, this is what I would like to have, this is what I would like to achieve. Fuerza Unida addresses this. Fuerza Unida has served us to develop us emotionally, spiritually, intellectually. Before, we could have drowned in a glass of water. Now, no matter how big the problem, we can endure, we can survive.

Id.; see also WOMEN WORKING TOGETHER, *supra* note 82 (claiming members of La Mujer Obrera face discrimination in many forms). "We are struggling to be respected for the contributions we make to this society." *Id.*

94. See Noemi Herrera, *Mujer Obrera Opens Day-Care Center*, EL PASO TIMES, June 13, 1998, at 3B (describing La Mujer Obrera opening the only year-round day care and preschool in the Head Start program that operates in conjunction with the worker advocacy organization); see also Suzanne Hoholik, *Laid-off Levi Plant Workers Find Strength to Help Others*, SAN ANTONIO EXPRESS-NEWS, July 3, 1996, available in 1996 WL 2839345 (detailing how Fuerza Unida members sew and sell bedding to support needy families in the community).

95. See Guerra, *supra* note 19 (quoting a Fuerza Unida member).

All the Fuerza Unida members I've heard speak have said that prior to being laid-off, they had no consciousness of being part of a larger community of workers, had no understanding of their place in the global marketplace, had no analysis or thoughts about their status as women in the workplace or at home.

Id.; see also WOMEN WORKING TOGETHER, *supra* note 82 (explaining La Mujer Obrera's quest to raise workers' awareness of their role as women and as economic producers).

96. See Lam, *supra* note 41, at 640 ("[G]arment workers typically believe that they are at the mercy of the shop owner."). Lam assess that garment workers "feel they are lucky to have jobs and are desperate to keep them. This provides garment workers with multiple rationales against bringing forward a complaint." *Id.*

confront their fears and demand answers through public relations campaigns. For example, Latina seamstresses have used various forms of protests ranging from hunger strikes,⁹⁷ storming offices of politicians,⁹⁸ to blocking U.S. Customs' commercial inspection areas.⁹⁹

Perhaps the most profound tactic Fuerza Unida and La Mujer Obrera members have used is appealing to the media. For example, several members of La Mujer Obrera stormed into a former place of employment and chained themselves to the doors or their sewing machines.¹⁰⁰ After police arrested these garment workers, La Mujer Obrera members protested outside the El Paso County courthouse.¹⁰¹ These protesters hid their faces behind bandanas after a fellow La Mujer Obrera member was

97. See James E. Garcia, *A Thread of Hope: Rights Group Seeks to Protect Sweatshop Employees*, AUSTIN AM.-STATESMAN, Jan. 1, 1991, at A1 [hereinafter Garcia, *A Thread of Hope*] (discussing La Mujer Obrera's tactic of engaging in hunger strikes as a means of protest against garment employers); Jasmina Wellinghoff, *Group of Laid-off Levi Strauss Workers Still Battling Ex-Employer*, SAN ANTONIO EXPRESS-NEWS, Nov. 27, 1994, available in 1994 WL 3544767 (discussing Fuerza Unida's hunger strike held in front of the old Levi's Zarzamora plant five years after the closing).

98. See Suzanne Gamboa, *Garment Workers Rally over Wage Fight*, DALLAS MORNING NEWS, Dec. 19, 1990, at 18B (depicting Mujer Obrera members storming into a downtown office of the Texas Employment Commission (TEC) demanding recourse against employers who failed to pay them wages); James E. Garcia, *Garment Workers Storm El Paso Mayor's Office*, AUSTIN AM.-STATESMAN, May 2, 1991, at B3 (describing Mujer Obrera members upset with the inaction by the city of El Paso stormed former Mayor Suzie Azar's office).

99. See Hudson, *supra* note 50 (detailing La Mujer Obrera member participation in storming government offices, walking off their jobs, and conducting hunger strikes); James Pinkerton, *The Cost of Free Trade/Job Retraining in Wake of NAFTA Branded a Failure*, HOUS. CHRON., Oct. 5, 1997, at 1 [hereinafter Pinkerton, *The Cost of Free Trade*] ("In the months and years since NAFTA took effect, Mujer Obrera has been the principal advocate for displaced workers, and it employs confrontational tactics to constantly remind the public of the plight of the workers."). Pinkerton states "the group has packed city hall chambers with hundreds of supporters, picketed state and federal training officers who oversee NAFTA funds, even blocked the international bridge a few times. They've missed no opportunities to trash NAFTA and the resultant fallout on El Paso workers." *Id.*; see Jim Weddell, *NAFTA Protesters Block Bridge*, EL PASO TIMES, June 5, 1997, at 8D (portraying La Mujer Obrera members blocking the U.S. Customs commercial inspection at the Bridge of the Americas in El Paso, Tex.).

100. See Hudson, *supra* note 50 (portraying Cecilia Rodriguez, founder of La Mujer Obrera, when she along with five other members chained themselves to sewing machines to protest working conditions and six months worth of unpaid wages).

101. See Suzanne Gamboa, *Masked Garment Workers Protest Hearing*, DALLAS MORNING NEWS, Nov. 7, 1990, at 13D (depicting garment workers outside the El Paso County Courthouse protesting the arrest of six women who chained themselves to sewing machines); Garcia, *A Thread of Hope*, *supra* note 97 at A1 (presenting another La Mujer Obrera member who was beaten after talking to a reporter from a Philadelphia newspaper about factory conditions).

beaten at a factory.¹⁰² Negative publicity has forced these corporations to take their employees bargaining power seriously.¹⁰³ Also, Fuerza Unida's public condemnation of Levi's has prompted the company to improve relations with its employees.¹⁰⁴ Fuerza Unida alleges Levi's now deals more cooperatively with its current employees throughout the United States.¹⁰⁵ For instance, Levi's devised a team concept to replace the piecework system,¹⁰⁶ as well as other forms of production. Also, in 1999, Levi's offered displaced employees from four Texas plants a benefits package, valued at \$245 million, which includes eight months prior notification; severance pay; extended medical coverage; and early retirement benefits.¹⁰⁷ As a result of constant pressure from Fuerza Unida, Levi's is conscientiously building trust with its employees and has sought assistance from union members to attain that trust.¹⁰⁸

102. See Gamboa, *Masked Garment Workers Protest Hearing*, *supra* note 101 (stating that the garment worker, who actively protests for La Mujer Obrera, was bit in the face and had her lips cut with scissors due to her association with La Mujer Obrera).

103. See Kever & Paulson, *supra* note 74 (stating that "[t]he boycott generated little visible effect, but the resulting publicity was painful for Levi"). Negative publicity has included protests in San Antonio and at the Levi headquarters in San Francisco in November of 1990. See *id.*

104. See *Fuerza Unida Campaign Bulletin*, *supra* note 5, at 4 (quoting former U.S. Representative Henry B. Gonzales, "[w]hen a company is so irresponsible — a company that has been making money and then willy-nilly removes a plant to get further profit based on greed and on cheaper labor costs in the Caribbean — I say you have a bad citizen for a company.").

105. See Middleton, *supra* note 52, at 608. "Instead of simply closing plants and contracting out jobs, Levi's began to seek more cooperative means of dealing with the twenty-four thousand it still employed in plants in the United States." *Id.*

106. See *id.* Middleton states that Levi's "first project was to institute a team concept in its plants to replace the repetitive and exhausting piece-work system." *Id.* Middleton asserts the program, appropriately called FAST (Finishing and Sewing Team), ties compensation to productivity. See *id.* "By at least one account, the new team concept has led to fist fights among workers who blame slower team members for lowering the earnings of the group." *Id.*; see also Lam, *supra* note 41, at 635-36 (defining the piecework wage system in which a worker is paid for each garment she assembles or produces, instead of the amount of time she works). Lam discusses how wages in the piecework wage system can vary over a very wide range since the pay depends on how fast a garment worker works — the faster she sews, the more wages she will earn. See *id.* Piecework wage employers regard the system as efficient because it provides workers with an incentive to work quickly. See *id.* However, labor officials contend the piecework wage system affords contractors a pretext for avoiding compliance with the minimum wage law and is just one of the ways of circumventing labor standards. See *id.*

107. See *Levi to Shut Plants, Cut Workers*, J. REC., Feb. 23, 1999, available in 1999 WL 9843414; Rebecca Quick, *Levi Strauss to Close Half of its Plants in N-USA*, FIN. EXPRESS, Feb. 24, 1999, available in 1999 WL 5531252.

108. See Middleton, *supra* note 52, at 608 (describing that after La Fuerza Unida's public condemnation of Levi's prompted the company to adopt new tactical relations with its workers, and to enlist workers into new relational forms of production). Levi's realized

These Latina organizations have utilized the public forum to inform the public of various injustices in the workplace.¹⁰⁹ Demonstrations and other forms of protests have enabled the general public to gain insight into the garment workers' labor struggles.¹¹⁰ Despite the threat of arrest or the health risks arising from hunger strikes, Latina seamstress union members continue fighting for their rights.¹¹¹

These organizations have also used the private forum to educate their members. For instance, La Mujer Obrera offers classes on politics and economics, and educates workers concerning their labor rights.¹¹² La Mujer Obrera conducts demonstrations and meets regularly with local politicians and community leaders for support.¹¹³ Also, the organization provides members with a food bank, free medical care, and a day care center.¹¹⁴ In turn, Fuerza Unida internally devised a national boycott of

that it had to build trust and sought participation by union members in achieving that goal. *See id.*

109. *See id.*; *see also* Garcia, *A Thread of Hope*, *supra* note 97 (reporting La Mujer Obrera uses tactics reminiscent of the 1960's civil rights movement to protect sweatshop conditions in the factories); Pinkerton, *supra* note 99.

110. *See* Middleton, *supra* note 52, at 607-08 (discussing the different techniques utilized by workers to get public attention); Garcia, *A Thread of Hope*, *supra* note 97 (comparing tactics used by La Mujer Obrera to those used in the Civil Rights Movement).

111. *See* James E. Garcia, *State Sues El Paso Factories Accused of Not Paying Workers*, AUSTIN AM.-STATESMAN, May 25, 1991, at B3 [hereinafter Garcia, *State Sues El Paso Factories*] (depicting La Mujer Obrera members' conduct in a thirteen day hunger strike); Tom Bower, *Former Levi's Employees Fight to Regain Benefits*, SAN ANTONIO EXPRESS-NEWS, Jan. 18, 1996, available in 1996 WL 2817736 (portraying Fuerza Unida members holding a hunger strike in front of the Zarzamora Levi plant in San Antonio).

112. *See* WOMEN WORKING TOGETHER, *supra* note 82. La Mujer Obrera's Workers' School offers classes in "English, health, women's issues, civil, labor and human rights, organizing, political economy, and citizenship." *Id.*

113. *See* Jim Specht, *Displaced Texas Workers Take Complaints to Hill*, GANNETT NEWS SERV., June 24, 1997, available in 1997 WL 8830890 (depicting dozens of La Mujer Obrera members traveling to Washington, D.C. to convince department of Commerce lawmakers of the necessity to cut red tape, improve communications with local governments, and design programs that will provide the kind of help that will get people back to work). Representative Silvestre Reyes of El Paso, Texas, vowed to make fellow lawmakers understand the plight of thousands of low-skilled workers in border areas who have lost their jobs due to NAFTA. *See id.*

114. *See* Eviatar, *supra* note 7 (asserting that "[s]ince its inception 10 years ago, their grass-roots organization has tried to develop a political consciousness and activism among El Paso's women garment workers."). The leaders of La Mujer Obrera offer "classes on progressive politics and economics, and attract workers through a food bank, free medical clinic and law center." *Id.* "La Mujer Obrera holds demonstrations and meets regularly with local politicians and community leaders to press for action." *Id.*

Levi's, as well as demonstrations, and hunger strikes.¹¹⁵ Fuerza Unida has also built a women workers center and food bank for its members.¹¹⁶

V. SEEKING LEGAL RECOURSE

La Mujer Obrera and Fuerza Unida have sought legal recourse against their employers in connection with plant closings. In 1992, Fuerza Unida filed an \$11 billion lawsuit against Levi's alleging discrimination under the Employee Retirement Income Security Act (ERISA),¹¹⁷ and alleging a violation of the Texas workers compensation prohibition, which bans employer discrimination against employees who file claims.¹¹⁸ The four claims asserted against Levi's under ERISA included: (1) being wrongfully discharged under Section 510 of ERISA;¹¹⁹ (2) Levi's improperly calculated pension benefits of severance pay;¹²⁰ (3) the closure of the San Antonio plant discriminated against those workers who had initiated filing or already filed workers' compensation claims;¹²¹ and, (4) Levi's breached an agreement to pay its employees profit-sharing or a bonus of \$500.¹²²

Fuerza Unida argued that the workers as a whole suffered discrimination in two instances. First, motivation for the plant closure was to prevent the workers from exercising their rights under the Levi Strauss benefit plans.¹²³ Second, the higher workers' compensation costs at the San Antonio plant contributed to the decision to relocate.¹²⁴ In the

115. See Erlich, *supra* note 70, at 7 (following the 1990 Zarzamora Levi plant closing, approximately 200 workers planned a five-day hunger strike in San Antonio and San Francisco). The displaced workers then formed Fuerza Unida which recruited several hundred laid-off workers. See *id.* Through rallies, picket lines, and demonstrations they eventually got Levi's and the state to pay for job retraining and education. See *id.*

116. See *Fuerza Unida Campaign Bulletin*, *supra* note 5, at 7 (detailing La Fuerza Unida's sewing cooperative and economic development project; food bank; the availability of the San Antonio Women in Crisis Center which offers resources and peer counseling; and its membership development and leadership training).

117. See 29 U.S.C. § 1001 (1994) (creating the Employee Retirement Income Security Act ("ERISA")).

118. See *[Fuerza] Unida v. Levi Strauss & Co.*, No. CIV. SA-90-CA-480, 1992 WL 46788* (W.D. Tex. Mar. 6, 1992); *aff'd*, 986 F.2d 970(5th Cir. 1993).

119. See *id.*

120. See *id.*

121. See *id.*

122. See *id.*

123. See *id.* at *8 (citing plaintiff's contention that the San Antonio Levi's plant was closed to avoid paying benefits to its employees, and discourage employees from filing compensation claims).

124. See *[Fuerza] Unida*, 1992 WL 467488, at *14 (arguing workers' compensation costs were part of the costs on which the closure decision was based).

United States District Court, Levi's moved for summary judgment.¹²⁵ The motion was granted and was affirmed on appeal by the Fifth Circuit United States Court of Appeals.¹²⁶ United States District Judge H.F. Garcia rejected Fuerza Unida's claim asserting, "The company made a business decision motivated by financial consideration during tough economic times."¹²⁷ In response to Fuerza Unida's claim that the plant closing violated Texas law, Judge Garcia contended that no authority supported such a claim.¹²⁸ The judge dismissed the case with prejudice, preventing the case from being filed again.¹²⁹ In addition, a district court sanctioned Fuerza Unida attorney Larry Daves \$5,000.00 for filing a frivolous claim.¹³⁰ Despite the loss, members of Fuerza Unida vowed to continue its struggle against Levi's.¹³¹

In 1991, La Mujer Obrera initiated legal proceedings against former employers alleging their refusal to pay employees back wages.¹³² The Texas Attorney General's Office sued the owners of Sonia's Apparel and D.C.B. Apparel, Inc. pursuant to the Texas Pay Day Act,¹³³ which requires employers to pay workers within two weeks after they earn

125. *See id.* at *1.

126. *See id.*

127. *See id.* at *14 (quoting District Judge H.F. Garcia).

There was no discrimination in the action; all employees were treated equally. This was a business decision, motivated by economic considerations. Such an economic move is unfortunate for those employed there, but also is not unusual in the economic but also is not unusual in the economic environment so prevalent at the time.

Id.; *see also* Kever & Paulson, *supra* note 74 (stating Judge Garcia rejected all major contentions made by Fuerza Unida in their suit against Levi's).

128. *See* [Fuerza] Unida, 1992 WL 467488, at *14 (asserting Fuerza Unida did not cite authority for the proposition that the San Antonio Zarzamora plant closing was illegal because workers' compensation costs were part of the costs on which the closure decision was based).

129. *See id.* at *3; *see also* Kever & Paulson, *supra* note 74 (discussing Judge Garcia dismissal of the case with prejudice, meaning it cannot be refiled).

130. *See* Middleton, *supra* note 52, at 607 (explaining that after the case was affirmed on appeal, the district court later sanctioned Fuerza Unida attorney, Larry Daves, \$5,000 under Rule 11 for bringing a frivolous claim).

131. *See* Bower, *supra* note 72 (stating six years after the San Antonio plant closed, ex-employees are continuing their quest to regain back pay and benefits).

132. *See* Hudson, *supra* note 50 (describing La Mujer Obrera turning to the Texas Attorney General for help after refusing a \$15,000 settlement offer by DCB Apparel Group Inc. to defray back wages owed to about 75 garment employees); Gamboa, *No Trial for 6 Garment Workers*, *supra* note 1 (demonstrating garment employees are owed back pay by an apparel contractor).

133. *See* TEX. LAB. CODE ANN. ch. 61 (Vernon 1996) (listing the Texas Pay Day Act provisions).

wages.¹³⁴ According to court documents, the employees assert they are owed back wages totaling \$24,595.56 for the months of October and November.¹³⁵ Failure to pay employees would make it a third degree felony.¹³⁶ In June 1991, a state judge held that Sonia's Apparel and D.C.B. Apparel, Inc. owner, Andre Diaz, liable for back pay owed to his employees.¹³⁷

In another 1991 lawsuit, six members of La Mujer Obrera brought suit against their employer, Diana Fashions, for back pay.¹³⁸ The employees claimed that the company owed them \$13,000 in wages, excluding overtime.¹³⁹ A judge ruled in the employees' favor, and ordered the seizure of the company's sewing machines.¹⁴⁰ The judge further ordered the employees to auction off the company's sewing machines and other equipment.¹⁴¹ Unfortunately, the Internal Revenue Service seized the

134. See Hudson, *supra* note 50 (detailing the Texas Attorney General's Office suit against D.C.B. Apparel (D.C.B. Apparel) and Sonia's Apparel for withholding \$24,595.56 in wages from garment employees); see also Garcia, *State Sues El Paso Factories*, *supra* note 111 (announcing that the Texas Attorney General's Office sued owners of two El Paso garment factories accused of not paying their workers). The suit claimed owners of Sonia's Apparel and D.C.B. Apparel violated the Texas Pay Day Act, which requires employers to pay workers within two weeks after wages are earned. See *id.*

135. See Garcia, *State Sues El Paso Factories*, *supra* note 111 (detailing garment employees' claims against their employers).

136. See Hudson, *supra* note 50 (explaining that employers who violate the Texas Pay Day Act may be assessed a third-degree felony charge).

137. See Eviatar, *supra* note 7 (asserting that a state judge in June determined that employer Andre Diaz, the contractor against whom the workers are striking, is responsible for paying his workers the back wages they are owed).

138. See *El Paso Garment Contractor Drops Complaint on Protesting Employees*, AUSTIN AM.-STATESMAN, Jan. 29, 1991, at B4 (claiming that the garment workers are owed back wages by an apparel contractor who hired them to sew garments for a women's clothier). According to the employees, the contractor shut down the business, moved the sewing machines, and reopened down the street as El Paso International Apparel. See *id.*; Suzanne Gamboa, *Charges Dropped in Garment Workers' Protest*, ASSOCIATED PRESS, Jan. 28, 1991, available in 1991 WL 6168841 (alleging Diana Fashions failed to pay its employees due wages).

139. See *Garment Workers Share Cash from Auction of Firm's Goods*, DALLAS MORNING NEWS, Feb. 6, 1991, at 12D (stating what the employees claimed they were owed by their employer).

140. See *id.*; see also Suzanne Gamboa, *El Paso Garment Workers Go on Second Hunger Strike*, DALLAS MORNING NEWS, May 14, 1991, at 21A [hereinafter Gamboa, *El Paso Garment Workers Go on Second Hunger Strike*] (noting that hunger strikes have been used by La Mujer Obrera as a means of achieving its goals); Garcia, *State Sues El Paso Factories*, *supra* note 111. But see *El Paso Garment Contractor Drops Complaint on Protesting Employees*, *supra* note 138 (denoting that the tactics used by La Mujer Obrera are not always effective).

141. See *Garment Workers Share Cash from Auction of Firm's Goods*, *supra* note 139 (stating a judge ruled in the garment employees' favor and ordered the machinery seized and sold); see also Gamboa, *El Paso Garment Workers Go on Second Hunger Strike*, *supra*

machinery, claiming Diana Fashions owed \$390,000 in back taxes.¹⁴² La Mujer Obrera members could not stop the IRS auction.¹⁴³ Instead, IRS officials instructed them to file claims directly with the IRS.¹⁴⁴ However, the women did find other machinery belonging to the company and immediately auctioned it.¹⁴⁵ Initially, they priced the equipment at 50 percent of the market value, but they received no bids.¹⁴⁶ In a subsequent auction, the equipment sold after limits on bidding were withdrawn.¹⁴⁷ Although victorious as a matter of law, the employers never compensated these women for their services.

VI. BACK WAGES

A prominent problem facing these Latina organizations is employers who shut down production without giving proper notice or paying back wages owed to their employees.¹⁴⁸ Legislators have created new legislation in response to Congressional findings citing plant closings and employee dislocations as national problems.¹⁴⁹ Currently, a federal law

note 140 (indicating the garment employees were allowed to auction off their employer's property).

142. See Gamboa, *El Paso Garment Workers Go on Second Hunger Strike*, *supra* note 140 (noting the IRS seized the property to auction it for delinquent taxes); see also *Garment Workers Share Cash from Auction of Firm's Goods*, *supra* note 139 (asserting that before the garment workers could sell the machinery, the IRS seized it to settle a five-year-old \$390,000 tax lien against the defunct company).

143. See *Garment Workers Share Cash from Auction of Firm's Goods*, *supra* note 139 (explaining La Mujer Obrera members unsuccessfully protested the IRS auction of the equipment, and were told to file claims with the IRS).

144. See *id.*

145. See *id.* (stating garment employees found other machinery that belonged to Diana Fashions and immediately auctioned it). The article notes that no bids were made at the first sale even though equipment was marked at 50% of market value, but that it was finally sold at a rescheduled auction which dropped all limits on bidding. See *id.*; *State Briefs*, *HOUS. CHRON.*, Feb. 5, 1991, at 16 (describing garment workers who received money from the sale of sewing machines and other equipment seized from Diana Fashions).

146. See *Garment Workers Share Cash from Auction of Firm's Goods*, *supra* note 139 (detailing that the machinery was marked at 50% of the market value, and was finally auctioned off after all limits on bidding were dropped at a rescheduled auction).

147. See *id.*

148. See Gamboa, *Charges Dropped in Garment Workers' Protest*, *supra* note 138 (citing La Mujer Obrera contention that, "closing operations, moving sewing machines to a new spot and reopening under another name is a common tactic of unscrupulous contractors and subcontractors.").

149. See Notice Requirements For Plant Closings and Mass Layoffs, Worker Adjustment and Retraining Notification Act Release No. 86 Lab. L. Rep. (CCH) § 10 (July 13, 1988) (explaining that the new legislation that applies to companies that employ at least 100 employees is a response to Congressional findings which indicated worker dislocations occurring due to plant closures and mass layoffs is a problem of national importance);

entitled the "Worker Adjustment and Retraining Notification Act" (WARN)¹⁵⁰ requires employers to provide employees with sixty days prior notification before a plant closing.¹⁵¹ Despite this federal legislation, various Texas garment industries, such as Levi's in San Antonio¹⁵² and El Paso-based subcontractor Diana Fashions, continue to freely shut down production without providing employees with legal sufficient notice.¹⁵³ Texas plants continue to close without proper notice despite the existence of WARN.¹⁵⁴ Usually, employers relocate either to Mexico or to another location and simply change the name of the business.¹⁵⁵ In such circumstances, La Mujer Obrera and Fuerza Unida have called on the State of Texas to lead its battles in the courtroom.¹⁵⁶ However, the federal enforcement of WARN has failed to protect the Latina garment worker from abrupt plant closures. Therefore, Latina labor groups have demanded that the State place more stringent limits on employers from

Ansley, *supra* note 21, at 1868 (recounting that although Congress repeatedly failed to pass plant-closing legislation before the enactment of WARN due to a presidential veto and vociferous opposition, Congress did manage to pass a law that required closing employers give employees 60 days notice).

150. See Worker Adjustment and Retraining Notification Act (WARN), 29 U.S.C. §§ 2101-2109 (1994).

151. See 29 U.S.C. § 2101 (1994) (stating that WARN requires employers who are planning a plant closing or a mass layoff to give affected employees at least sixty days prior notice).

152. See Medaille & Wheat, *supra* note 23, at 23 (reporting that in 1990, a Levi plant based in San Antonio, Texas violated WARN by closing without providing notice as statutorily required to its 1,150 employees who charged that their jobs were exported to Costa Rica).

153. See *id.*; see also Gamboa, *Charges Dropped in Garment Workers' Protest*, *supra* note 148 (detailing garment workers who contend Diana Fashions owed them back wages, and that the company shut down and reopened down the street as El Paso International Apparel without providing notice to the workers).

154. See Ansley, *supra* note 21, at 1870 (stating that because the provisions of WARN are exceedingly modest, WARN has had little impact on the business community). Corporations have learned how to maintain their business practices with little modification to comply with WARN. See *id.*

155. See *El Paso Garment Contractor Drops Complaint on Protesting Employees*, *supra* note 138 (indicating closing operations, moving sewing machines to a new location, and reopening under another name is a common tactic of unscrupulous contractors and subcontractors); see also Gamboa, *Charges Dropped in Garment Workers' Protest*, *supra* note 138 (reporting that garment workers accuse companies of shutting down plants and re-opening at other locations).

156. See Plaintiff's Original Petition 1, *Texas v. Payan*, No. 91-5784 (171st Dist. Ct., El Paso County, Tex. May 24, 1991). Carlos Payan does business as Sonia's Apparel and the other defendants named in the case are Sonia Maria Quintana, who also does business as Sonia's Apparel, and D.C.D. Apparel Group, Inc. See *id.*

freely closing plants, as well as provide more protection for employees in their place of business.¹⁵⁷

An initial problem is determining which employer to sue: the manufacturer or the subcontractor. The manufacturer contracts with a subcontractor to produce clothing. In turn, the subcontractor supplies the equipment and the labor.¹⁵⁸ Based on the nature of this labor contract, an employment relationship develops between the manufacturer and subcontractor. Without the reliance on one another, production of apparel would be impossible.¹⁵⁹ Usually, when employees allege labor violations, both the manufacturer and subcontractor attempt to avoid liability by blaming each other.¹⁶⁰ During employee back wage disputes, manufacturers maintain the subcontractor is responsible for paying employees, while the subcontractor contends the manufacturer fails to pay enough money to meet the payroll.¹⁶¹ In determining which party should be held liable as an "employer," Texas courts should invoke the Joint Employer

157. See Ansley, *supra* note 21, at 1785 (detailing "[p]eople hit by plant closings have searched for effective ways to respond.").

Although not all reactions have involved direct recourse to law, many of the responses have been "legal" ones, in that they have attempted to invoke the power of the state. These responses have called on the state in two ways: first, to limit the freedom of employers to withdraw productive resources from workers and communities, and second, to gain participation rights for workers and communities in decisions involving major productive resources.

Id.

158. See Lam, *supra* note 41, at 658-60 (discussing the practice in which the garment manufacturer pays the subcontractor by the job or piece while the subcontractor furnishes sewing machines and the labor).

159. See *id.* at 660. "The integrated nature of garment production in the retail apparel industry business and the symbiotic relationship between the shop owner and manufacturer support the view that the industry as a whole is a common enterprise." *Id.* But see Middleton, *supra* note 52, at 90 (contending "[t]he great majority of garment workers in this country and around the world are employed by small subcontractors . . . who neither design, nor own, nor sell, nor in any way control the work they do or the price they are paid for it").

160. See Garcia, *A Thread of Hope*, *supra* note 97 (presenting subcontractor Carlos Payan who claims he could not pay his employees because the contractor failed to pay him); Garcia, *State Sues El Paso Factories*, *supra* note 111 (describing a spokesman for D.C.B. Apparel claiming the subcontractor, Carlos Payan, was paid in full and cannot do anything about Payan not paying the garment employees); Hudson, *supra* note 50 (presenting Andre Diaz, chairman of the board and manager of D.C.B. Apparel and subcontractor Carlos Payan). Both Diaz and Payan blame one another for employees not receiving their wages. See *id.* Payan claims Diaz did not pay him enough to meet the payroll, while Diaz' attorney claims Diaz did pay Payan, but no one knows what Payan did with the money. See *id.*

161. See Garcia, *A Thread of Hope*, *supra* note 97 (explaining a manufacturer who claims a subcontractor is responsible for paying employees, and subcontractor who alleges the manufacturer did not pay enough to meet the payroll); *Team To Probe Garment Work*

Doctrine.¹⁶² Under this doctrine, courts hold manufacturers and subcontractors jointly and severally liable for labor violations if they establish an employment relationship.¹⁶³ First, the court examines the nature of the business in the garment industry.¹⁶⁴ Second, the court determines a joint employment relationship exists if three elements are present: (1) whether there is an arrangement between the employers to share the employee's services; (2) whether the manufacturer is acting directly or indirectly in the interest of the subcontractor in regards to the employee; and, (3) whether the subcontractor controls, is controlled by, or is under common control with the manufacturer.¹⁶⁵ If the court determines a joint employment exists, both the manufacturer and the subcontractor will be held liable for alleged labor violations.¹⁶⁶ Aside from this criteria, the court may look into the reasonableness of the manufacturer's actions in regards to its relationship with both its subcontractor and its employees.¹⁶⁷ If the court holds that those actions were unreasonable, then it may hold the manufacturer solely liable for any violations.¹⁶⁸

Woes, DALLAS MORNING NEWS, Feb. 1, 1991, at 12D (noting subcontractors allege they cannot pay workers because they themselves are not making a profit).

162. See Joint Employment, 29 C.F.R. § 791.2 (1998) (stating a determination of whether a joint employment exists depends upon all the facts in the particular case).

163. See *id.*

[I]f the facts establish that the employee is employed jointly by two or more employers, i.e., that employment by one employer is not completely disassociated from employment by the other employer(s), all of the employee's work for all of the joint employers during the workweek is considered as one employment for purposes of the act. In this event, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the act, including the overtime provisions, with respect to the entire employment for the particular workweek.

Id.

164. See *Lam*, *supra* note 41, at 661 (indicating the joint employer test would factor in the relative economic and bargaining power of manufacturer and sweatshop owners into the totality of the circumstances, and that it may indicate that the sweatshop owner is in reality little more than an agent of the manufacturer); *Middleton*, *supra* note 52, at 582 (stating the joint employer doctrine governs when two employers are in fact separate, but each retains significant control over the terms and conditions of work for the employees). *Lam* asserts that focusing on the real power structure in the garment industry can penetrate the manufacturer's immunity from liability for labor violations occurring in garment sweatshops. See *id.*

165. See *Middleton*, *supra* note 52, at 582 (setting forth a form of a joint employer test).

166. See *id.* "Where a joint employment relationship exists, both employers are liable for complying with wage and hour standards." *Id.*

167. See *Lam*, *supra* note 41, at 662. "If the court determines the manufacturer acted unreasonably, then the manufacturer will be held liable for the violations of the garment workers' right in the contractor's sweatshop." *Id.*

168. See *id.*

Texas courts have invoked variations of the Joint Employer Doctrine.¹⁶⁹ In *Gonzalez v. Puente*,¹⁷⁰ the district court addressed the joint employment theory based on the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act.¹⁷¹ Pursuant to Section 791.2 of the Fair Labor Standards Act,¹⁷² a joint employment relationship arises if facts support that two or more employers jointly employ an employee.¹⁷³ Pursuant to the Migrant and Seasonal Agricultural Worker Protection Act,¹⁷⁴ the existence of a joint employer depends on five factors: (1) the amount of control over employees; (2) whether employees work on the premises of the company; (3) whether the company has the power to hire or fire employees; (4) whether employees perform a job specifically for the production line; and (5) whether the employee may refuse to work for the company or may work for others.¹⁷⁵ Since the Joint Employment Doctrine is not a new legal concept for Texas courts, the courts could easily implement the doctrine on behalf of garment laborers who are victims of plant closures and back wages. The use of this doctrine would prevent manufacturers and subcontractors from escaping liability.

Whether liability for labor violations should be imposed on the manufacturer, subcontractor, or both, is debatable. Some argue liability should

169. See *Gonzalez v. Puente*, 705 F. Supp. 331, 333 (1988) (indicating plaintiffs admitted they worked directly for defendant Monico Puente, but also sought recovery from Holmes and Holmes under a joint employer theory). In *Gonzalez*, plaintiffs sought recovery by implicating the joint employer theory within the Migrant and Seasonal Agricultural Worker Protection Act of 1983 (MSAWPA). See *id.* The court invoked a joint employer test, and held that plaintiffs' failed to establish a joint employer relationship existed. See *id.*

170. See *id.*

171. See *id.* at 333-36 (indicating Congress implicated the joint employment doctrine in MSAWPA).

172. See Joint Employment, 29 C.F.R. § 791.2(a) (1998).

That employment is not completely disassociated from employment by the other employer, all of the employee's work for all of the joint employers during the workweek is considered as one employment for the purposes of the act. In this event, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the act. . . .

Id.

173. See *id.*; see also *Gonzalez*, 705 F. Supp. at 333 (defining joint employment relationships pursuant to the Fair Labor Standards Act in 29 C.F.R. § 791.2(a)).

174. See 29 U.S.C. § 1801 (1994). Regulations for the Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA) were created to provide necessary protections for migrant and seasonal agricultural workers. See *id.* This federal labor law statute was designed exclusively to regulate employee-employer relationships in the agricultural industry. See *id.*

175. See *Gonzalez*, 705 F. Supp. at 334-36 (presenting the appropriate criteria of the joint employment test which must be satisfied under the MSAWPA).

rest on the manufacturer because it is the ultimate employer over the subcontractor and the employees.¹⁷⁶ Others argue the manufacturer is the full financial force behind the garment operation.¹⁷⁷ However, the subcontractor is an integral element which conducts business on behalf of the manufacturer. Although garment manufacturers and subcontractors are distinct business entities, the course of business between them are closely interrelated. Without the subcontractor, the manufacturer cannot conduct business and vice versa.

There are arguments that maintain manufacturers are not directly liable to the garment workers because the subcontractor directly employs these workers.¹⁷⁸ In reality, manufacturers and subcontractors share control over garment employees. Without the contractor labor supplied by subcontractors, production of apparel would be impossible. Without the financial support of manufacturers, subcontractors and garment workers would be unemployed. Manufacturers and subcontractors hold greater bargaining power over their employees. Therefore, they should assume full responsibility over those employees. Liability should be imposed on both the manufacturer and the subcontractor.

The next problematic area involves the amount of wages owed to employees. It is usually customary for employers in the garment industry to pay employees according to a piecework wage system.¹⁷⁹ They pay an employee for each garment she produces rather than for the amount of hours she works per day. The amount of wages she receives depends on how many garments she produces in a certain amount of time. Usually, seamstresses will work at a fast pace to increase their piecework wage.¹⁸⁰

176. See Lam, *supra* note 41, at 628. "The characteristics of the domestic apparel industry manifest inherent economic advantages for manufacturers. For example, manufacturers have exceedingly favorable bargaining power relative to shop owners." *Id.*

177. See *id.* "The manufacturer occupies the top position in the business chain: it designs the particular piece to be produced and dispatches the job to contractors. The manufacturer has access to virtually unlimited supply of contract labor without any responsibility to the labor force." *Id.* at 629.

178. See *id.* at 629 (indicating that the subcontractor should be directly liable to garment workers).

Because of the traditional contracting system, the manufacturer, under typical circumstances, is relieved of any "direct" responsibilities to the garment workers, since they are technically employed by the contractor or shop owner. Thus, any violations of labor standards in garment shops is generally assumed by the contractor, who is considered the culpable party.

Id.

179. See *id.* at 635-36 (describing the piecework wage system whereby garment workers are paid according to the number of garments she produces rather than the amount of time she works).

180. See *id.* at 636 (emphasizing a garment worker's piecework wage depends entirely on how fast she works and how many garments she produces).

Not every employer implements the piecework wage system, some adopt the minimum wage requirements.¹⁸¹ Since piecework wages are based on productivity, unfriendly competition arises between workers who sew quickly to produce more garments. In particular, Levi's created a "Finishing and Sewing Team" where wages were based on productivity; however, the new team concept has led to problems among workers.¹⁸² One plant's pilot team program led to lower wages for the workers.¹⁸³ Based on the unfriendly competitiveness between workers and the instability of wages, the piecework wage system does not benefit the garment worker. Minimum wage will ensure the garment worker a steady paycheck, and the worker does not have to succumb to the stress of competing with fellow co-workers.

When subcontractors close plants and relocate without paying back wages to employees, deciding who to sue and what legal recourse to seek becomes a complex mind game for employees. For an employee who is unaware of her rights, this task is overwhelming and intimidating. Due to the support of Latina organizations such as La Mujer Obrera and Fuerza Unida, the employee no longer has to face her employer alone. Unfortunately, labor laws fail to offer blanket protection for the employee.¹⁸⁴

VII. TEXAS PAY DAY ACT

In response to La Mujer Obrera's numerous protests against the garment industry, Representative Paul Moreno of El Paso proposed legislation in 1991 which would make it a third degree felony for employers not to pay back wages to employees.¹⁸⁵ Moreno also proposed requiring employers convicted under this bill to post a bond with the Texas Employment Commission (TEC) to ensure employees receive their wages in the

181. See Allen R. Myerson, *Flourishing Jeans Industry Paints Two Border Portraits*, SAN ANTONIO EXPRESS-NEWS, Oct. 4, 1994, available in 1994 WL 11653674 (portraying fourteen garment workers hunched over sewing machines who earn the \$4.25-an-hour minimum wage, plus a piece rate to those who can produce the most garments).

182. Middleton, *supra* note 52, at 608.

183. See *id.* (discussing a pilot team program that was instituted in one Levi's plant which resulted in the lowering of wages by as much as a dollar per hour).

184. See Lam, *supra* note 41, at 641 (stating that "[a] lack of resources committed to the enforcement of state and federal worker-protection laws render labor regulations inadequate."). "Budget cuts at both state and federal levels have forced the government to understaff agencies and departments that handle both labor inspections in sweatshop industries." *Id.*

185. See Garcia, *State Sues El Paso Factories*, *supra* note 111 (stating Representative Paul Moreno of El Paso proposed a bill which would hold employers guilty of a third-degree felony for not paying workers).

future.¹⁸⁶ Regulations were also proposed requiring the TEC to ensure that employers pay employees at least twice a month.¹⁸⁷ Former Texas Governor Ann Richards and Attorney General Dan Morales fully supported the proposed legislation.¹⁸⁸ Immediately following the proposal of this bill, the Texas Attorney General's Office announced an investigation into working conditions at various garment industries to determine whether employers were in compliance with wage and labor laws.¹⁸⁹

Should an employee choose to seek legal recourse under the Pay Day Act, it is important to understand the provisions of the Act, as well as its enforcement procedures. Before proceeding under the Texas Pay Day Act, the employee must understand that the Act does not bar other common law actions, such as recovery of debt.¹⁹⁰ The ability to seek legal recourse under common law claims other than the statutorily enacted Texas Pay Day Act was set forth in *Holmans II v. Transource Polymers, Inc.*¹⁹¹ In *Holmans II*, the Texas Court of Appeals held that the Pay Day Act provisions do not trump common law remedies.¹⁹² Instead, the Pay Day Act is another choice of remedy the employee may seek if the claim is too small to embark into an expensive lawsuit.¹⁹³

VIII. TEXAS PAY DAY ACT WAGE CLAIMS

Once the garment employee embarks on adjudicating her wage claim, she may find the process extremely cumbersome. Before proceeding with

186. See James E. Garcia, *Striking for Decency: "Sweatshops" Under Fire*, AUSTIN AM.-STATESMAN, May 24, 1991, at A1 [hereinafter Garcia, *Striking for Decency*] (setting forth the requirements of employers convicted of withholding wages posting a bond with the TWC to ensure garment workers are paid in the future).

187. But see Eviatar, *supra* note 7 (asserting that the Texas Workforce Commission refuses to implement its regulations, and garment workers owed back wages continue to remain unpaid).

188. See Garcia, *Garment Workers Storm El Paso Mayor's Office*, *supra* note 98 (discussing the support of the Texas Pay Day Act by former Texas Governor Ann Richards and former Attorney General Dan Morales).

189. See Garcia, *Striking for Decency*, *supra* note 186 (reporting "the Texas Attorney General's Office announced an investigation into working conditions at the factories, where about 85% of the employees are women").

190. BLACK'S LAW DICTIONARY 402-03 (6th ed. 1990) (defining common-law action for recovery of debt as, "[t]he name of a common-law action which lies to recover a certain specific sum of money, or a sum that can readily be reduced to a certainty.").

191. 914 S.W.2d 189, 192 (Tex. App.—Fort Worth 1996, *no writ*) (holding that common-law claims are not preempted by payday laws).

192. See *id.*

193. See *id.* (explaining that the Texas Pay Day Act provides wage claimants an avenue for enforcement of wage claims, many of which would be too small to justify the expense of a civil lawsuit).

the guidelines under this Act, the garment employee should acquaint herself with the lengthy wage claim process and adjudicating procedures.

On January 1, 1990, the Texas Employment Commission, now part of the Texas Workforce Commission (TWC), was given a mandate from the state legislature to receive and adjudicate employee wage claims.¹⁹⁴ In other words, the Texas Pay Day Act instituted enforcement procedures the TWC would conduct. The Texas Pay Day Act is found in Chapter 61 of the Texas Labor Code.¹⁹⁵

All Texas businesses, except public employees, are subject to the Pay Day Act.¹⁹⁶ All persons who perform services in exchange for compensation, excluding close relatives and independent contractors, are considered "employees" within the Act.¹⁹⁷ An employee who claims an employer has failed to pay wages or owes back pay must file a complaint with the TWC.¹⁹⁸ An employee must file a wage claim no later than the 180th day after the wages claimed became due for payment.¹⁹⁹ Complaint forms are available from any TWC office, or through a request by mail.²⁰⁰

The wage claim form requires information to support the wage claim.²⁰¹ Once the form is properly completed, the employee must return it either to a local TWC office,²⁰² or mail it directly to the TWC office in

194. See TEXAS WORKFORCE COMMISSION, Pub. No. LL-55 (0696), SUMMARY OF TEXAS PAY DAY LAW 1 [hereinafter SUMMARY OF THE TEXAS PAY DAY LAW] (indicating the TWC's authority to enforce the Texas Pay Day Law).

195. See TEX. LAB. CODE ANN. ch. 61 (Vernon 1996). Chapter 61 of the Texas Labor Code is entitled "Payment Of Wages". *Id.*

196. See TEX. LAB. CODE ANN. § 61.003 (Vernon 1996). An employee is defined as "an individual who is employed by an employer for compensation." *Id.* at § 61.001(3).

197. *Id.* at § 61.001(3).

198. See TEX. LAB. CODE ANN. § 61.051(b) (Vernon 1996) (stating an employee must file a wage claim in writing on a form prescribed by the Texas Workforce Commission (TWC)).

199. See TEX. LAB. CODE ANN. § 61.051(c) (Vernon 1996). "A wage claim must be filed not later than the 180th day after the date wages claimed became due for payment." *Id.*

200. See SUMMARY OF THE TEXAS PAY DAY LAW, *supra* note 194, at 1 (indicating the employee may file the wage claim in person at any TEC office or by mailing the claim to an address designated by the TWC).

201. See *Wage Claim*, Form LL-1(0298) Inv. No. 621750 (Texas Workforce Commission Labor Law Dep't, Austin, Tex.) (stating the wage claim form must be filled properly or the TWC will not accept it).

202. See TEX. LAB. CODE ANN. § 61.051(d) (Vernon 1996); SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 1 (noting the wage claim form must be returned to a local TWC office or mailed to the TWC address designated on the form itself).

Austin, Texas.²⁰³ In addition, the employee must sign the complaint, and verify it by a Notary Public or any TWC employee.²⁰⁴

After the TWC processes the wage claim, it notifies the employer of the claim by sending a copy of it along with a form to which the employer may respond.²⁰⁵ An investigator from the TWC's Labor Law Department examines the claims supplied by both the employer and employee, and determines whether wages are due, and the amount of wages due.²⁰⁶ If the investigator determines that an employer acted in bad faith for failing to pay wages, or an employee acted in bad faith for filing a false wage claim, an administrative penalty of \$1000 will be invoked.²⁰⁷

Should either the employer or employee be dissatisfied with the investigator's determination, they can appeal that ruling to the Special Hearings Department.²⁰⁸ Requests for an appeal must be made in writing no later than the twenty-first day after the preliminary determination order is mailed to the parties by the TWC.²⁰⁹

Appeals hearings are usually held over a telephone conference call.²¹⁰ The parties may present witness testimony and submit evidence.²¹¹ The

203. See *Wage Claim*, *supra* note 201.

204. See SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 1 (explaining the wage claim form must be signed by the employee, and verified by a Notary Public or TWC employee); *Wage Claim*, *supra* note 201.

205. See *id.* at 1 (stating "TEC notifies the employer of the claim by sending the employer a copy of the wage claim and a form on which to furnish the employer's response.").

206. See TEX. LAB. CODE ANN. § 61.052(a)-(c) (Vernon 1996) (describing the TWC's role in determining the preliminary wage determination order). Upon receiving the wage claim, TWC conducts an investigation and issues a preliminary wage determination order. See *id.* Thereafter, the TWC informs both the employer and employee of its decision by mail. See *id.*; SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 1 (claiming, "[a]n investigator from TEC's Labor Law Department, using the information furnished by the employee and the employer, along with any further information that the investigator feels to be essential, makes a determination as to whether wages are due, and, if so, the amount due.").

207. See TEX. LAB. CODE ANN. §§ 61.053(b)-(c) & 61.061 (Vernon 1996) (citing the TWC may assess an administrative penalty of \$1000 against an employee who brings a wage claim in bad faith).

208. See *id.* at § 61.054(a) (indicating "[e]ither party may request a hearing to contest a preliminary wage determination order."); see also SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 1 (stating either party may appeal the ruling to the Special Hearings Department).

209. See TEX. LAB. CODE ANN. § 61.054(b) (Vernon 1996) (noting the request for hearing must be made in writing no later than the twenty-first day after the date the TEC mails the notice of the preliminary wage determination order); see also SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 1.

210. See SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 2 (claiming appeals hearings are conducted by telephone conference call).

211. See *id.*

hearings officer will provide a written order after determining whether wages are owed.²¹² If wages are due, the order states the amount of wages owed, any penalty assessed, and the parties are advised of their right to judicial review of the final order.²¹³

Abiding by all time limitations set forth in the Texas Pay Day Act is mandatory.²¹⁴ Texas caselaw holds that time limitations for appealing a Texas Workforce Commission's determination must be followed. One Texas case, *Instrument Specialties Co., Inc. v. Texas Employment Commission*,²¹⁵ specifically states that a party challenging a TWC ruling must comply with administrative appeal time limitations, as well as judicial review time limitations and that the failure to comply with these time requirements results in a waiver of further proceedings.²¹⁶

Either party dissatisfied with the results of the appeal may file a written motion for rehearing.²¹⁷ The motion must be filed fourteen days after the date the order was mailed.²¹⁸ Failure to comply with the time requirement constitutes a waiver, and the final order will be enforced.²¹⁹

After a final order of the Commission is mailed, either party may file a judicial appeal of the order within thirty days in a court with proper jurisdiction.²²⁰ The TWC and the parties involved must all be made parties in the proceeding.²²¹ The action must be brought in the county of the claimant's residence unless the claimant is not a Texas resident, then the action

212. *See id.*

213. *See id.*

214. *See* TEX. LAB. CODE ANN. § 61.051 (Vernon 1996) (setting forth mandatory time limitations); SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 1-2 (asserting the time limits set forth in the Pay Day Act are mandatory). Failure to abide by the timing requirements may prohibit a party from appealing a wage determination order at either the administrative or judicial levels. *See id.*

215. *See* *Instrument Specialties Co., Inc. v. Texas Employment Comm'n*, 924 S.W.2d 420, 423 (Tex. App.—Fort Worth 1996, no writ) (holding the employer, who failed to abide by the Pay Day Act's mandatory time limitations, was barred from appealing the TWC's ruling in favor of employees).

216. *See id.* at 420 (explaining an employer's failure to meet Pay Day Act timing requirements barred a suit against wage claimants).

217. *See* TEX. LAB. CODE ANN. § 61.062(a)-(e) (Vernon 1996) (detailing the requirements a party must meet to seek judicial review of the TWC's wage determination order). A party must first exhaust the administrative remedies under the Pay Day Act before seeking judicial review. *See id.*; SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 2.

218. *See* SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 2 (emphasizing compliance with the fourteen day time limit). Failure to file a motion for rehearing results in the order becoming final. *See id.*

219. *See id.*

220. *See id.* (indicating that if the judicial appeal is filed late, the court will have no jurisdiction to hear the case).

221. *See id.*

must be brought in Texas where the employer has its principal place of business.²²²

IX. INEFFECTIVE LEGISLATION: THE TEXAS PAY DAY ACT

According to Chapter 61, "Payment of Wages" of the Texas Pay Day Act, its legislative purpose is to prevent employers from withholding wages by providing employees with, ". . . an avenue for enforcement of wage claims, many of which would be too small to justify expense of a civil lawsuit."²²³

A. *No Private Right of Action*

The initial problem with the Pay Day Act is that it does not allow an employee a private right of action against the employer. Instead, the employee must comply with the wage claim guidelines set forth by the TWC.²²⁴ Allowing the employee a private right of action will allow her the opportunity to have her case filed and adjudicated more quickly than having to abide by the procedural requirements of the wage claim provisions of the Pay Day Act.²²⁵

Since the Pay Day Act does not allow a private right of action, the employee is not guaranteed a jury trial. In *Holmans II v. Transource Polymers, Inc.*,²²⁶ the court maintained that the Pay Day Act does not allow a trial by jury because the state legislature did not intend the Act to be a mandatory and exclusive remedy.²²⁷ A former employee of Transource Polymers, Inc. (Transource) brought a common law debt action against the company for unpaid sales commissions and expenses.²²⁸ Transource claimed Holmans failed to exhaust his administrative remedies required under the Texas Pay Day Act.²²⁹ In addition, Transource alleged

222. See TEX. LAB. CODE ANN. § 61.062(d) (Vernon 1996) (detailing where judicial appeal must take place); SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 10.

223. *Holmans II v. Transource Polymers, Inc.*, 914 S.W.2d 189, 192 (Tex. App.—Fort Worth 1996, no writ).

224. See *Wage Claim Form*, *supra* note 201.

225. See Letter from Lynn Smith, Labor Law Department, *Texas Workforce Commission*, to Author (Jan. 13, 1999) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (stating that the 19,246 new claims filed under the Pay Day Act has created a backlog for new applicants). A Labor Law Department letter stated that the TWC office in Austin, Texas has no wage claim statistics from El Paso and San Antonio, Texas. See *id.*

226. See *Holmans II*, 914 S.W.2d. 189, 190 (holding that the Pay Day Act does not preempt common-law claims for unpaid wages).

227. See *id.* at 193. "Therefore, we can only conclude the legislature intended the Pay Day Law to be cumulative of the common law and stand as an alternative remedy a wage claimant may seek." *Id.*

228. See *id.* at 189.

229. See *id.* at 190.

that because the Texas Pay Day Act was statutory, it was a mandatory and exclusive remedy which demanded full compliance.²³⁰ The court held that the legislature only intended the Texas Pay Day Act to be an available remedy an employee may choose in order to avoid costly and lengthy litigation.²³¹ Since the Texas Pay Day Act does not preserve a jury trial at any stage of the proceedings, the TWC is the appointed entity that determines the validity of a wage claim.²³²

For impoverished garment workers who cannot endure the expense of a civil trial based on a common law claim, the Texas Pay Day Act is an alternative to engaging in an expensive lawsuit. The language of the Pay Day Act assures the employee the ability to adjudicate her claim with the assistance of a state agency without having to spare the expense of litigation. However, the lack of a jury trial may be detrimental to the cases.

The right to a trial by jury is guaranteed under Article I, Section 15 of the Texas Constitution.²³³ Replacing the administrative proceedings with a jury trial ensures the employee a fair adjudication of her wage claim.²³⁴ The TWC makes its ruling on wage claims from information supplied by both the employee and the employer,²³⁵ along with any other information that the investigator may deem essential.²³⁶ All wage determinations are made at the discretion of a TWC investigator. Since the TWC investiga-

230. See *id.* "Transource moved the district court to dismiss appellant's suit, arguing the court was without subject-matter jurisdiction because appellant failed to exhaust his administrative remedies provided by the Pay Day Law." *Id.*

231. See *id.* at 194 (holding the Pay Day Act provides "a streamlined process by which a wage claimant may bring a claim without the expense and inconvenience of a lawsuit, as well as deterring employers from withholding wages.").

232. See *Holmans II*, 914 S.W.2d at 194. "Should a claimant choose to file a claim under the statute, utilize its remedial scheme, and appeal the final administrative order, then the claimant is properly required to abide by the statute's provisions". *Id.*

233. See TEX. CONST. art. I, § 15 (articulating the right of trial by jury). "The right of trial by jury shall remain inviolate." *Id.*

234. Cf. Shari Seidman Diamond, *Scientific Jury Selection: What Social Scientists Know and Do Not Know*, 73 JUDICATURE 178, 182 (1990) (indicating that studies show juries will determine an outcome based on trial testimony more often than anything else presented during trial); Abbe Smith, "Nice Work if You Can Get It": "Ethical" Jury Selection in Criminal Defense, 67 FORDHAM L. REV. 523, 547-60 (1998) (discussing the role race, gender and ethnicity play in selecting a jury biased in favor of the defendant).

235. See TEX. LAB. CODE ANN. § 61.052(a) (Vernon 1996) (providing that the TWC analyze and investigate each claim and issue a preliminary determination order); SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 1 (stating "[a]n investigator from TEC's Labor Law Department, using the information that the investigator feels to be essential, makes a determination as to whether wages are due. . ."); see generally *Wage Claim Form*, *supra* note 201.

236. See SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 1 (discussing the information the TWC investigator uses when determining whether wages are due to the employee).

tor's determinations are discretionary, the amount of information or evidence needed to support an employee's wage claim is obscure.²³⁷ Other evidentiary problems are created by subcontractors who keep false wage records or claim such records are missing.²³⁸ Therefore, the investigator's subjective standard approach in wage claim determinations are restrictive. Enabling a jury to assess the evidence with a reasonable prudent person standard²³⁹ will allow the wage claim to be thoroughly analyzed. Furthermore, allowing the jurors to decide the issues of fact will allow both the employer and the employee to be heard. The testimony and other evidence presented will allow the jury the opportunity to deliberate in order to reach a reasonable determination.

Although the *Holmans II*²⁴⁰ decision held that a jury trial is not mandatory under the Pay Day Act, the legislature's failure to allow a jury trial within Pay Day Act proceedings limits a wage claimant's constitutional right to a jury trial. For a garment worker who has no income because her employer purposely withheld her wages, the Pay Day Act is the only remedy she can seek to avoid an expensive and inconvenient lawsuit. The purpose of the Pay Day Act was to help those garment workers who were not paid wages by their employers.²⁴¹ Although the Pay Day Act was created to benefit the garment worker, it does not grant

237. See Letter from Lynn Smith, Labor Law Dep't, *Texas Workforce Commission*, to Author (Dec. 11, 1998) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (stating that "a TEC investigator will elicit and consider both oral and written statements and other documents from the parties in addition to the wage claim itself and the employer's written response to the wage claim.") A TWC hearing officer will develop a record of all relevant testimony and documentary evidence during the administrative hearing on a wage claim. See *id.*

238. See Lam, *supra* note 41, at 642 (asserting labor investigators regularly encounter evidentiary problems created by sweatshop owners' false or missing wage records). "Owners can always relocate, using new equipment and new workers. As a result, garment workers, afraid of driving shop owners elsewhere, refrain from filing complaints and feel compelled to overstate wages and understate hours in order to protect their bosses' businesses and thus their own jobs." *Id.*

239. See BLACK'S LAW DICTIONARY 1226-27 (6th ed. 1990) (defining "prudent" as "[p]ractically wise, judicious, careful, discreet, circumspect, sensible"). The "reasonable prudent person standard" is a legal term describing the standard by which the jury (or neutral fact-finder) will assess a case.

240. See *Holmans II v. Transource Polymers, Inc.*, 914 S.W.2d 189 (Tex. App.—Fort Worth 1996, no writ).

241. See Garcia, *Striking for Decency*, *supra* note 186 (discussing the support of the Texas Pay Day Act by former Texas Governor Ann Richards, and former Texas Attorney General Dan Morales). During the proposal of the Texas Pay Day Act, the Texas Attorney General's Office announced an investigation into the working conditions of the factories, where about 85% of the employees are women. See *id.*

any procedural or legal benefits to the garment worker.²⁴² Allowing the garment worker a private right of action under the Texas Pay Day Act will allow her wage claim to be adjudicated efficiently. Most important, guaranteeing the garment worker a trial by jury will allow her claim to be adjudicated effectively.

Facially, the Pay Day Act appears to hold employers liable for purposely withholding wages; however, the effect of the statute on a garment worker's right to a trial by jury demonstrates the weaknesses of the Act. The *Holmans II*²⁴³ case implies that if the claimant chooses to file under the Pay Day Act, then the claimant must accept its limitations. Since the garment worker cannot afford a trial by jury on a common law claim, the garment worker must sacrifice that trial by jury under the Pay Day Act. Ineffective legislation that promises to benefit a class of people on its face should be changed to fulfill its promises.²⁴⁴

The Texas Pay Day Act should allow a private right of action like the one allowed under the Worker Adjustment and Retraining Notification Act (WARN).²⁴⁵ Pursuant to Section 639.1(d) of WARN, "Employees, their representatives and units of local government may initiate civil actions against employers believed to be in violation of Section 3 of the Act."²⁴⁶ Allowing an employee a private right of action against an employer enables the employee the opportunity to be heard in a court of law. Restricting an employee to an administrative setting as required under the Texas Pay Day Act does not allow the employee to adjudicate her claim against her employer efficiently. Instead, she must first adjudicate her claim to a TWC investigator and if unsatisfied with the determination, face the possibility of lengthy administrative appeals.

242. See Eviatar, *supra* note 7 (alleging the Texas Pay Day Act has not been enforced, and that the TWC refuses to implement its regulations); Gamboa, *Garment Workers Rally over Wage Fight*, *supra* note 98 (quoting Cecilia Rodriguez, director of La Mujer Obrera). Spokespersons for La Mujer Obrera claim that displaced garment workers filed a number of wage claims with the TWC, but have not seen any action. See *id.*

243. See *Holmans II*, 914 S.W.2d at 189.

244. But see Letter from Lynn Smith (Jan. 13, 1999), *supra* note 225 ("Any program administered by an agency will receive complaints from parties who receive adverse rulings."). "Concerning our ability to collect wages, we believe all collection remedies available are already provided by the Texas Pay Day Law." *Id.*

245. See Worker Adjustment and Retraining Notification, 20 C.F.R. § 639.1(d) (1998) (stating employees may initiate civil actions against employers believed to be in violation of Section 3 of the Worker Adjustment and Retraining Notification Act (WARN)); 29 U.S.C. § 1854(a) (1994) (stating that any person aggrieved by a violation of the Migrant And Seasonal Agricultural Worker Protection Act (MASAWPA) may seek a private right of action).

246. *Id.*

B. Lengthy Wage Claim Process

A second problem with the Pay Day Act is its lengthy wage claim process.²⁴⁷ The numerous proceedings involved require a great amount of patience from the employee who is awaiting adjudication of her claim while living without income.²⁴⁸ If the TWC investigator finds in favor of the employer, a garment worker will rarely seek an appeal since she must use the time to look for another job to support herself and her family.²⁴⁹ Without an income to survive on, she cannot continue to appeal a denied wage claim.

C. Judgment Proof Employers

A third problem with the Pay Day Act concerns judgment proof employers who close their businesses and relocate under an assumed name.²⁵⁰ The change in name makes it impossible for the TWC to find them and serve the employer with notice of an employee's wage claim.²⁵¹

247. See Letter from Lynn Smith (Jan. 13, 1999), *supra* note 225 (responding to the length of the wage claim process). "This varies greatly, depending on the complexity of the case, and the workload of our investigative staff. On receipt of a valid new claim, the Labor Law Department mails the claimant an acknowledgment letter, which provides a computer-generated date (60 days in the future) as the *estimated date* of the determination order. However, most cases receive determinations earlier." *Id.*

248. See Gamboa, *Garment Workers Rally over Wage Fight*, *supra* note 98 (depicting garment workers protesting the El Paso Office of the Texas Employment Commission demanding action against employers withholding wages). Cecilia Rodríguez, director of *Mujer Obrera*, claims, "[t]he garment workers, many now employed, have filed a number of claims with TEC, but have not seen any action." *Id.*

249. See Letter from Lynn Smith (Jan. 13, 1999), *supra* note 225 (noting wage claim statistics). "Historically, 37.5% of wage claim issues are ruled in favor of the employee; and 46% of issues are ruled for the employer. Another 16.5% receive a ruling of no jurisdiction. Many wage claims have multiple issues, and each issue receives a separate ruling." *Id.*

250. See Lam, *supra* note 41, at 642 (asserting sweatshop owners may evade labor investigators by relocating their businesses, using new equipment and new workers); see also Garcia, *Striking for Decency*, *supra* note 186, at 2 (noting garment factory owners may close their business abruptly without paying their employees). But see Letter from Lynn Smith (Jan. 13, 1999), *supra* note 225 (responding to which types of employers tend to violate the Texas Pay Day Law). A representative from the TWC stated that they "have no statistics to show how many claims are filed against each particular type of industry." *Id.* This same representative also stated that "collection remedies available are already provided by the Texas Pay Day Law." *Id.*

251. See Suzanne Gamboa, *Protesters Won't Go on Trial: Six Women Who Chained Themselves to Sewing Machines Still Want Their Back Wages*, *FORT WORTH STAR-TELEGRAM*, Jan. 29, 1991, available in 1991 WL 3817452 (indicating closing operations and re-opening the business under another name are common tactics of unscrupulous contractors and subcontractors).

If the TWC cannot contact these employers, the employee will never receive her earned wages.²⁵²

D. *Ambiguous Role of the Texas Attorney General*

The fourth problem found in the Act concerns the role of the Texas Attorney General. According to Section 61.020 of the Pay Day Act, when an employer fails to pay wages, the Attorney General, ". . . may seek injunctive relief in district court against an employer who repeatedly fails to pay wages as required by this chapter."²⁵³ Under this language of the statute, the Attorney General is not required to take action. Instead, she may at her discretion choose to bring suit against such employers.²⁵⁴ Allowing the Attorney General's Office permissive authority²⁵⁵ to seek action against an employer does not strengthen the consequences of the Pay Day Act. If the legislature made it mandatory for the Attorney General to bring suit against every employer that withheld wages from employees, employers would undoubtedly abide by the Pay Day Act. The threat of Attorney General action would prompt employers to pay their employees.

When deciding whether to initiate or settle litigation referred by the TWC, the Attorney General should follow the recommendation of the TWC investigator unless good cause exists to disregard it.²⁵⁶ If the Attor-

252. *But see* Letter from Lynn Smith (Dec. 11, 1999), *supra* note 237 (discussing how TWC forces a judgment proof employer, who purposely flees, to pay its employees).

Once the TWC orders an employer-whether an individual, a corporation or some other entity-to pay wages, the TWC may use any means at its disposal to collect the wages from that entity, even if the person or company has closed one business and started a new one. The most effective collection tools currently available to the TWC are the authority to levy assets and the ability to hold payments by the state. Of course, if the delinquent employer is a corporation or other entity whose owners are not liable to pay the ordered wages, the TWC would have no authority to collect the wages from those individuals even if they formed another business entity. There are other ways, such as bankruptcy, for a delinquent employer to elude collection of wages at least temporarily. However, if an individual leaves the State of Texas, the TWC may still be able to collect unpaid wages through a reciprocal agreement with the other state.

Id.

253. TEX. LAB. CODE ANN. § 61.020 (Vernon 1996); *see also* SUMMARY OF TEXAS PAY DAY LAW, *supra* note 194, at 6 (detailing attorney general action for an employer's failure to pay wages).

254. *See* TEX. LAB. CODE ANN. § 61.020 (Vernon 1996) (indicating that the terms *may seek* demonstrate the attorney general's complete discretion to enforce the statute).

255. *Id.*

256. TEX. H.B. 1, 75th Leg., R.S. (1997) (explaining the attorney general's role in deciding whether to initiate or settle litigation referred by a state agency). The Attorney General "shall follow the written recommendation of the executive director of the refer-

ney General deems litigation necessary, the Attorney General will provide the TWC with reasons supporting its determination.²⁵⁷ Placing a mandatory requirement on the Attorney General to seek legal action against liable employers may ultimately encourage such employers to abide by the Pay Day Act. If the TWC fails to recommend the Attorney General to seek action against repeated violators of the Pay Day Act, employers may continue withholding wages from employees. In the eyes of employers, the Texas Pay Day Act will be nothing more than a dormant law that appeals to the consciousness of Texas lawmakers. However, forcing the Attorney General to seek action against employers despite of state agency recommendations on its own authority may deter employers from committing future violations.

X. PROPOSAL

There are solutions for the problems of the Texas Pay Day Act. The Pay Day Act provisions should explicitly allow an employee a private right of action, and abolish the role of the Texas Workforce Commission Investigator as the sole determinant of wage claims. Instead the TWC, as a state agency, should continue to help employees with filing wage claims. The TWC should also conduct investigations on behalf of employees. Finally, the TWC should help the employee compile evidence, and provide counsel to represent the employee. Restricting the role of the TWC and allowing the employee a private right of action under the Texas Pay Day Act will eliminate lengthy wage claim proceedings, and assure a fair determination.

A. *Adjudicating Judgment Proof Employers*

Regarding judgment proof employers, the Texas legislature should invoke two new provisions. The first provision should force all Texas employers to keep records of employees, wages, work hours, and paydays. The second provision should enforce Attorney General compliance with Section 61.020 of the Pay Day Act which authorizes the Attorney General to seek injunctive relief in district court.²⁵⁸

ring state agency, or his designee, unless the Attorney General determines that good cause exists to disregard such recommendation. In that event, the Attorney General shall provide the client with an explanation of the reasons for such determinations." *Id.*

257. *See id.*

258. *See* TEX. LAB. CODE ANN. § 61.020 (Vernon 1996). I suggest altering the language of the statute to ensure mandatory action on the part of the attorney general: "The attorney general *shall seek* injunctive relief in district court against an employer who repeatedly fails to pay wages as required by this chapter."

The burden of proof should rest on employers in wage claim disputes; therefore, employers should have the sole responsibility of maintaining accurate employee wage records. Pursuant to the first provision, employers must turn over such records to the TWC monthly or be assessed a costly penalty. Also, the employers should provide employees with copies of their records along with monthly TWC reports. This method will allow the employee the opportunity to maintain a level of discretion over her employer. If she detects any discrepancies, she could immediately inform the TWC anonymously if she fears employer retaliation. As effective forms of direct evidence, employee wage records would enable the wage claim to be adjudicated quickly and fairly. Failure to maintain these records or report monthly to the TWC should result in immediate criminal sanctions. In addition, those businesses should be forbidden from conducting business.

B. *Attorney General Action*

The second provision of the Pay Day Act should force the Attorney General to comply with Section 61.020²⁵⁹ of the Pay Day Act and seek injunctive relief. This section of the Act should not remain dormant.²⁶⁰ If it is exercised continuously, employers would not be able to evade the consequences of the Pay Day Act. Attorney General action has proven effective in a previous suit filed in 1991 by the State of Texas, acting through Attorney General Dan Morales, against owners of Sonia's Apparel and D.C.B. Apparel Group, Inc.²⁶¹ The State of Texas sought an immediate temporary restraining order and temporary injunction against

259. *See id.*

260. *See* Letter from Lynn Smith (Dec. 11, 1998), *supra* note 237 (acknowledging "[t]he TWC has not yet invoked the provision for injunctive relief against an employer who repeatedly fails to pay wages as required."). *But see* Plaintiff's Original Petition 1, Texas v. Payan, No. 91-5784 (171st Dist. Ct., El Paso County, Tex. filed May 24, 1991) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (indicating the Texas Attorney General Office initiated litigation against defendants pursuant to Section 5.115 of the Texas Pay Day Act).

261. *See* Plaintiff's Original Petition 3, Texas v. Payan, No. 91-5784 (171st Dist. Ct., El Paso County, Tex. filed May 24, 1991) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*).

the companies.²⁶² In addition, the State of Texas requested a permanent injunction upon final hearing.²⁶³

Plaintiff's original petition alleged defendant's Carlos Payan and Sonia Maria Quintana owners of Sonia's Apparel, and D.C.B. Apparel Group committed unlawful practices that violated legally operative business enterprises in El Paso, Texas.²⁶⁴ According to plaintiff's factual allegations, various garment workers were contractually employed by defendants. Defendants failed to pay approximately forty-seven employees.²⁶⁵ A list of forty-seven garment workers was attached to the petition that provided the name of the worker, the wage rate owed, the number of hours worked, and the dates worked.²⁶⁶ Defendants were joint employers who owed employees a total amount of \$24,595.56 in unpaid wages.²⁶⁷ Finally, defendants were responsible for paying wages and repeatedly failed to do so.²⁶⁸

Plaintiff's original petition asserted that if the court failed to prevent defendants from violating the Pay Day Act, the State of Texas and its citizens will suffer irreparable harm.²⁶⁹ The plaintiff specifically sought a

262. See *id.* at 3-4 (requesting that before notice and hearing, a temporary restraining order be issued; that after due notice and hearing a temporary injunction be issued against Defendants); see also Brief for Plaintiff in Support of Motion for Temporary Injunction 2-4, Texas v. Payan, No. 91-5784 (171st Dist. Ct., El Paso County, Tex. June 5, 1991) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (demonstrating the need for a temporary injunction).

263. See Plaintiff's Original Petition 4, Texas v. Payan, No. 91-5784 (171st Dist. Ct., El Paso County, Tex. filed May 24, 1991) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (requesting that upon final hearing a permanent injunction be issued against Defendants).

264. See *id.* at 2 (claiming Defendants Sonia's Apparel and D.C.B. Apparel, Inc. committed unlawful practices which, "have caused and will cause adverse effects to legitimate business enterprises which conduct trade and commerce in a lawful manner in the State of Texas and the County of El Paso").

265. See *id.* at 3 (indicating Defendants failed to provide employees with the, "wage rate promised, the number of hours worked, and the dates worked").

266. See Exhibit A, Plaintiff's Original Petition, Texas v. Payan, No. 91-5784 (171st Dist. Ct., El Paso County, Tex. filed May 24, 1991) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (listing forty-seven employees owed wages as of Nov. 15, 1990).

267. See Plaintiff's Original Petition 3, Texas v. Payan, No. 91-5784 (171st Dist. Ct., El Paso County, Tex. filed May 24, 1991) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (asserting "[t]he total amount of unpaid wages owed to the employees listed in Exhibit A is \$24,595.56").

268. See *id.* (claiming Defendants were joint employers over the employees, and repeatedly failed to pay wages within the semi-monthly period after wages were earned).

269. See *id.* (emphasizing that "[u]nless restrained by this Honorable Court, Defendants will continue to violate the laws of the State of Texas and cause immediate, irreparable injury, loss and damage to the State of Texas and to the general public").

permanent injunction against defendants from concealing evidence; withholding wages due to the employees for services rendered; failing to provide notices in conspicuous locations indicating pay days; and violating the Texas Pay Day Act.²⁷⁰

The 171st District Court of El Paso, Texas, issued an immediate temporary restraining order against defendants alleging the necessity to restrain defendants from violating the Texas Pay Day Act.²⁷¹ The court determined that defendants purposely failed to pay wages, and placed notices in conspicuous locations throughout the business indicating pay days.²⁷² In addition, the court also held that no notice would be given prior to the issuance of the temporary order due to possible employer retaliation against employees, abrupt closing of the business, and the depletion of assets.²⁷³

Following the issuance of the temporary restraining order, the State of Texas motioned for a temporary injunction.²⁷⁴ In its brief, the State alleged it suffered imminent and irreparable harm at the hands of the defendants.²⁷⁵ The imminent harm consisted of the repeated offense of failing to pay wages to the citizens of Texas. According to the State of Texas, adequate compensation could not be rendered for violations of the Pay Day Act.²⁷⁶

In response to the plaintiff's brief in support of its motion for a temporary injunction, the court granted injunctive relief.²⁷⁷ The court held that

270. See *id.* at 4 (detailing the acts which defendants would be proscribed from doing under the restraining order).

271. See Plaintiff's Temporary Restraining Order and Order Setting Hearing 3, Texas v. Payan, No. 91-5784 (171st Dist. Ct., El Paso, Tex. May 24, 1991) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*) (stating that "[i]t clearly appears to the Court that there exists a present and urgent need for the immediate entry of a Temporary Restraining Order issued in the public interest restraining and enjoining Defendants, their agents, servants, employees and representatives from continuing to violate the Texas Pay Day Act").

272. See *id.* (holding Defendants repeatedly withheld employee wages, failed to post notices in the work place indicating pay days, and violated all provisions of the Texas Pay Day Act).

273. See *id.* (finding that there is no adequate remedy at law and that the Plaintiff will suffer immediate and irreparable injury, loss, or damage if the commission of these acts are not restrained immediately).

274. See Brief for Plaintiff in Support of Motion for Temporary Injunction 1, Texas v. Payan, No. 91-5784 (171st Dist. Ct., El Paso County, Tex. June 5, 1991) (on file with *The Scholar: St. Mary's Law Review on Minority Issues*).

275. See *id.* at 3.

276. See *id.* ("The irreparable injury . . . can not be measured by a pecuniary standard consequently, the State of Texas cannot adequately be compensated for these violations of the Pay Day Act.").

277. See Order Granting Temporary Injunction 1, Texas v. Payan, No. 91-5784 (171st Dist. Ct., El Paso County, Tex. June 10, 1991) (on file with *The Scholar: St. Mary's Law*

plaintiff was entitled to relief under the Texas Pay Day Act for the purposes of (1) protecting employees from withheld wages; (2) protecting employees from retaliation due to the withholding of wages; and (3) preventing continuous and substantial injury to employees to the State of Texas.²⁷⁸ Finally, in 1993, the court issued a stipulated order that all wages owed for services performed shall be paid in full to employees.²⁷⁹

Injunctive relief under the Texas Pay Day Act must be sought after by the Attorney General pursuant Section 61.020²⁸⁰ against employers who repeatedly fail to pay wages to employees. This provision of the Texas Pay Day Act is perhaps the most effective. The Attorney General will be able to seek injunctions to prohibit employers from repeatedly violating the Pay Day Act. However, the Attorney General's failure to enforce this provision renders the Pay Day Act a dormant statute. Restraining the employer from concealing evidence, closing its place of business, and retaliating against its employees is the most effective way of targeting judgment proof employers. Thus, forcing the Attorney General to seek injunctive relief will strengthen the enforcement of the Texas Pay Day Act by protecting employees against employers during wage claim proceedings. Finally, injunctions would prevent employers from purposely avoiding litigation.

XI. CONCLUSION

Latina garment workers continue to be the focal point of the Texas garment industry. Once perceived as passive, uneducated employees, they have become labor regulators within their place of business. From sewing machine operators to vocalized labor leaders, these women have publicized their struggles in an emotionless industry. Despite the available legal recourse the women have sought against their employers, the State of Texas has yet to develop legislation that will truly benefit the Latina garment worker. The Texas Pay Day Act was developed in response to the Latina garment worker's plight, yet its enactment is ineffective. Until the legislature amends this Act to allow the employee to

Review on Minority Issues) ("Having read the pleadings and having considered the evidence and argument of the parties, it appears to the Court that Plaintiff is entitled to injunctive relief as herein granted.").

278. *See id.* (listing the Court's findings in support of the temporary injunction).

279. *See id.* (stating the Court issued a stipulated order that all wages owed for services performed, "shall be in full settlement of the cause of action for wages or any other claim against all defendants for wages in the period of time approximately April of 1991").

280. *See* TEX. LAB. CODE ANN. § 61.020 (Vernon 1996) (stating the Attorney General's authority to seek injunctive relief against employers who repeatedly violate the Texas Pay Day Act).

benefit from its offered protections, the employee will endure continuous wage violations and retaliation at the hands of their employers.